



AIA[®] Document A141[™] – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:

(Name and location or address)

University of Minnesota Project Name:
University of Minnesota Project No.:

Design and construction of

THE OWNER:

(Name and location)

Regents of the University of Minnesota
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, MN 55455

THE DESIGN-BUILDER:

(Name and location)

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

- A.1 GENERAL PROVISIONS
- A.2 OWNER
- A.3 DESIGN-BUILDER
- A.4 DISPUTE RESOLUTION
- A.5 AWARD OF CONTRACTS
- A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- A.7 CHANGES IN THE WORK
- A.8 TIME
- A.9 PAYMENTS AND COMPLETION
- A.10 PROTECTION OF PERSONS AND PROPERTY
- A.11 INSURANCE AND BONDS
- A.12 UNCOVERING AND CORRECTION OF WORK
- A.13 MISCELLANEOUS PROVISIONS
- A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT
- A.15 GMP PROPOSAL
- A.16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY
- A.17 MINIMUM WAGE RATES
- A.18 PROHIBITION AGAINST GRATUITIES
- A.19 VENDOR PERFORMANCE PROGRAM
- A.20 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT, AND SMALL BUSINESS PROGRAM
- A.21 USE OF NAME OR LOGO

Init.

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User Notes:

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A.22 MINNESOTA GOVERNMENT DATA PRACTICES ACT AND CONFIDENTIAL INFORMATION

A.23 AUDIT

A.24 NO-STRIKE PROVISION



Init.

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 and Article 8 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

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

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

(Paragraphs deleted)

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

The terms "law," "laws," "applicable laws," "applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities," and phrases of similar effect, shall mean the laws of any governmental entity having jurisdiction over the Project applicable to the performance, interpretation and enforcement of this Agreement.

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities, the Design-Builder shall promptly notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, statute, ordinance, code, rule or regulation or lawful order of any public authority.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, the Design-Builder shall furnish Work which complies with such applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, subject to the written approval of the Owner.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.4.3 The parties acknowledge that the Design-Builder is responsible for furnishing Instruments of Service (as defined in Section A.1.6.1) that are consistent with the Design-Build Documents as of the date of execution of this Design-Build Contract, as modified with the

Owner's written consent after that date. Accordingly, in the case of any inconsistency between, among or within any Design-Build Documents not clarified by an Addendum, the Design-Builder shall perform the Work in accordance with the Owner's interpretations. For purposes of determining whether the Design-Builder has performed the Work in accordance with the Design-Build Documents or whether the Owner or the Design-Builder is entitled to an adjustment in the Contract Sum as a result of any inconsistency in the Design-Build Documents after the date the Owner accepts the Final GMP Proposal, the parties shall deem the Final GMP Proposal to have required the Design-Builder to provide the higher cost alternative.

§ A.1.4.4 Where a Design-Build Document refers to standard specifications, such as Fed. Spec., ANSI, ASTM or other standards, if no date or edition is indicated, the latest or most recent edition of the standard, including all supplements, at the date of issue of that Design-Build Document shall apply to this Project.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder or incorporated by reference in a Design-Build Document signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of this Design-Build Contract by the Design-Builder is a representation that the Design-Builder has (1) visited the site, (2) become generally familiar with local conditions under which the Work is to be performed, (3) reviewed the information provided by Owner or obtained by the Design-Builder from other sources, and (4) correlated such information and personal observations with requirements of the Design-Build Documents as of the date of execution.

§ A.1.5.3 Execution of this Design-Build Contract by the Design-Builder is also a representation by the Design-Builder that the Design-Builder is (1) financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Design-Build Documents in an efficient and capable manner, (2) authorized to do business as a design-builder in the jurisdiction where the Project is located, (3) properly licensed by all necessary governmental, public or other authorities having jurisdiction in which the Project is located, and (4) the person(s) executing the Agreement on behalf of the Design-Builder are properly authorized to do so.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder, are Instruments of Service. The Owner shall own all common law, statutory and other reserved rights, including copyright, in the Instruments of Service. The Owner acknowledges that the drawings, specifications and other documents and materials and electronic data are prepared and furnished for construction use solely with respect to this Project, and the Owner agrees that any other use by the Owner shall be at the Owner's sole risk.

§ A.1.6.2 Without limiting the generality of Section A.1.6.1, the Owner may use the Instruments of Service (including without limitation Instruments of Service prepared by the Architect and the Architect's consultants), for planning or renovations of and additions to the Project, and the Owner may permit qualified professionals to reproduce all or portions of the Instruments of Service (including the design embodied in those Instruments of Service) for incorporation into instruments of service to be prepared by such other qualified professionals for planning or renovations of or additions to the Project or other projects for the Owner if those professionals assume all responsibility for the resulting instruments of service and all references to the Design-Builder and the Design-Builder's consultants are removed from the resulting instruments of service.

§ A.1.6.3 If this Design-Build Contract is terminated for cause or convenience after payment to the Design-Builder of amounts due under this Design-Build Contract, the Design-Builder shall promptly deliver to the Owner a complete set of prints and electronic copies of the Instruments of Service, as completed through the date of termination.

§ A.1.6.4 Upon completion of construction and before final payment, the Design-Builder shall forward to the Owner a revised set of prints and electronic copies of the drawings and specifications showing "as-built" conditions, including Change Orders and other modifications prepared by the Design-Builder.

§ A.1.6.5 Any set of electronic copies of drawings or specifications the Design-Builder is required to deliver pursuant to this Design-Build Contract shall be in a format acceptable to the Owner.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may act with regard to this Design-Build Contract through its Board of Regents, the President, the Vice President for University Services and her authorized representative(s) in accordance with the policies of the Board of Regents and delegations of authority published in the President's Delegations of Authority Library, which can be viewed at the following web address: www.ogc1.umn.edu/delegations/library. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted and approved by the Owner.

§ A.2.1.2 Intentionally Deleted

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§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. The Owner shall furnish surveys described in Section A.2.2.2 and other information prepared by third parties for the Project to the extent the Owner deems necessary for the performance of the Design-Builder's services. The Owner makes no representations or warranties as to the accuracy of the information it obtains and provides to the Design-Builder pursuant to this Section A.2.2. In addition, the Owner may provide the Design-Builder access to the Owner's records, which may contain information about the site and adjacent land and improvements that was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information made available to the Design-Builder from the Owner's records.

§ A.2.2.2 Subject to Section A.2.2.1, the Owner shall provide surveys describing physical characteristics, legal limitations and utility locations for the site of this Project, to the extent such physical characteristics, legal limitations and utility locations can be determined by review of readily available records observation of surface conditions and other standard surveying practices. Upon the reasonable request of the Design-Builder, the surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 Intentionally Deleted

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. Any such review shall be for the benefit of the Owner and shall not release the Design-Builder from its obligations to perform the Work in accordance with the Design-Build Documents.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections by governmental agencies necessary for proper execution and completion of the Work. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense.

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§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder, provided the Owner shall not become responsible for, and the Design-Builder shall not be released from responsibility for, any fault or defect in the Work or non-conformity with the Design-Build Documents by reason of the Owner giving or failing to give any such notice.

§ A.2.2.8 Intentionally Deleted

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 Subject to Section A.2.2.2, the Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements and legal authorizations regarding site utilization where essential to the completion of the Work.

§ A.2.3 OWNER REVIEW AND INSPECTIONS

§ A.2.3.1 The Owner may review the Design-Builder's documents and submittals, including but not limited to design and construction documents, required by the Design-Build Documents, and provide comments concerning corrections or amendments to such documents and submittals to the Design-Builder. Owner's review of such documents and submittals is not conducted for the purpose of determining errors or omissions in the documents or submittals, the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. Rather, the Owner's review of the documents or submittals is for Owner's own benefit.

§ A.2.3.2

(Paragraphs deleted)

The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site

inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design–Builder’s rights and responsibilities under the Design–Build Documents.

§ A.2.3.3 The Owner shall not be responsible for the Design–Builder’s failure to perform the Work in accordance with the requirements of the Design–Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design–Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design–Builder.

§ A.2.3.4 The Owner may reject Work that does not conform to the Design–Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design–Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.5 The Owner may appoint an on–site project representative to observe the Work and to have such other responsibilities as the Owner may delegate by written notice to the Design–Builder.

§ A.2.3.6 The Owner shall conduct timely inspections to determine the date or dates of Substantial Completion and the date of final completion.

(Paragraphs deleted)

§ A.2.4 OWNER’S RIGHT TO STOP WORK

§ A.2.4.1 If the Design–Builder fails to correct Work which is not in accordance with the requirements of the Design–Build Documents as required by Section A.12.2 or fails to carry out Work in accordance with the Design–Build Documents, the Owner may issue a written order to the Design–Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design–Builder or any other person or entity.

§ A.2.5 OWNER’S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design–Builder defaults or neglects to carry out the Work in accordance with the Design–Build Documents and fails after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, but in no event more than ten days after the written notice, the Owner may, without prejudice to other

remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design–Builder the reasonable cost of correcting such deficiencies. If payments due the Design–Builder are not sufficient to cover such amounts, the Design–Builder shall pay the difference to the Owner. The right of the Owner to carry out the Work pursuant to this Section A.2.5.1 shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design–Builder or any other person or entity.

ARTICLE A.3 DESIGN–BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design–Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design–Build Documents as if singular in number. The Design–Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design–builder in the location where the Project is located. The term "Design–Builder" means the Design–Builder or the Design–Builder’s authorized representative. The Design–Builder’s representative is authorized to act on the Design–Builder’s behalf with respect to the Project.

§ A.3.1.2 The Design–Builder shall perform the Work in accordance with the Design–Build Documents.

§ A.3.1.3 The Design–Builder shall exercise the skill and care of a sophisticated design–builder with experience in projects similar to the Project.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design–Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions in the location where the Project is located.

§ A.3.2.2 The agreements between the Design–Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner’s written request. The Owner shall be a third–party beneficiary of all such agreements.

§ A.3.2.3 The Design–Builder shall be responsible to the Owner for acts and omissions of the Design–Builder’s employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design–Builder’s obligations under the Design–Build Documents.

§ A.3.2.4 The Design–Builder shall carefully study and compare the Design–Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take

field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered. The Design–Builder shall resolve any such errors, inconsistencies or omissions to the Owner’s reasonable satisfaction before preparing the GMP Proposal pursuant to Article A.15.

§ A.3.2.5 The Design–Builder shall provide to the Owner for Owner’s written approval a GMP Proposal in the form of Exhibit D as provided in Article A.15, which shall include design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design–Build Documents. Deviations, if any, from the Design–Build Documents shall be disclosed to the Owner in writing.

§ A.3.2.6 Upon the Owner’s written approval of the Final GMP Proposal submitted by the Design–Builder, the Design–Builder shall provide to the Owner construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design–Build Documents shall be disclosed to the Owner in writing. Construction documents may include drawings, specifications and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved Final GMP Proposal;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

The Design–Builder shall incorporate into the construction documents such corrections and amendments requested by Owner.

§ A.3.2.7 The Design–Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner’s written approval of construction documents, the Design–Builder, with the assistance of the Owner, shall promptly prepare and file documents required to obtain necessary approvals of the construction documents from governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design–Builder shall obtain from each of the Design–Builder’s professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design–Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities

governing the design of the Project; and (b) that the Owner and its consultants and separate contractors, if any, shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design–Builder, the Architect or the Design–Builder’s other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design–Builder, or the Architect and such design professionals through the Design–Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design–Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design–Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design–Builder shall perform no construction Work prior to the Owner’s review and written approval of the construction documents.

§ A.3.3.2 The construction Work shall be in accordance with approved documents, except that the Design–Builder shall not be relieved of responsibility for deviations from requirements of the Design–Build Documents by the Owner’s approval of design and construction documents unless the Design–Builder has specifically informed the Owner in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design–Builder shall not be relieved of responsibility for errors or omissions in design and construction documents by the Owner’s approval thereof.

§ A.3.3.3 The Design–Builder shall direct specific attention, in writing or on resubmitted design and construction documents to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner’s approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design–Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design–Builder in its discretion provides such design services or certifications through a Contractor, the Design–Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional’s written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design–Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design–Build Documents.

§ A.3.3.6 The Design–Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design–Builder shall be responsible for the supervision and direction of the Work. If the Owner gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design–Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design–Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design–Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design–Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design–Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design–Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.3.9 The Design–Builder shall provide notices and verify utility locations pursuant to Minnesota Statutes, Chapter 216D. The Design–Builder shall bear all costs, losses and expenses the Owner may incur on account of the Design–Builder’s failure to comply with Minnesota Statutes, Chapter 216D.

§ A.3.4 LABOR AND MATERIALS

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

§ A.3.4.2 When a material is specified in the Design–Build Documents, the Design–Builder may make substitutions only with the written consent of the Owner, which the Owner may withhold in its sole discretion, and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design–Builder shall enforce strict discipline and good order among the Design–Builder’s employees and other persons carrying out the Work. The Design–Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design–Builder shall use its best efforts to maintain labor peace for the duration of the Project.

§ A.3.4.4 The Design–Builder shall check and keep accounts of all materials and labor entering into the Work. The Design–Builder shall reject any materials that will not conform with the Design–Build Documents when properly installed.

§ A.3.4.5 The Design–Builder agrees that it is an independent Design–Builder and an employing unit subject as an employer to all applicable unemployment compensation, worker’s compensation, occupational safety and health, or similar statutes so as to relieve the Owner of any responsibility or liability for safety or of keeping records, making reports or paying of any payroll taxes or contributions. The Design–Builder agrees to indemnify, defend (with counsel acceptable to the Owner) and hold the Owner harmless and reimburse it for any expense or liability incurred under said statutes in connection with the Design–Builder’s employees, including but not limited to attorneys’ fees. The Design–Builder’s obligations under this Section A.3.4.5 shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

§ A.3.4.6 The Design–Builder shall keep and have available all necessary records and make all payments, reports, collections and deductions and otherwise do any and all things so as to fully comply with all applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, all so as to fully protect the Owner from any and all responsibility or liability relating to (1) the production, purchase and sale, furnishing and delivering, pricing, and use or consumption of materials, supplies and equipment, (2) the hire, tenure or conditions of employment of employees and their hours of work and rates of the payment of their rate, (3) the keeping of records, making of reports, and payment of their rate, and (4) the keeping of records, making of reports, and the payment, collection and/or deduction of federal, state and local taxes, contributions, pension funds, welfare funds or similar assessments.

§ A.3.4.7 The Design–Builder shall bring to and store on the site only materials and equipment that are to be used directly in the Work. The Design–Builder shall promptly remove equipment from the site after it is no longer required for the Work. The Design–Builder shall be solely responsible for protection of materials and equipment stored at the site.

§ A.3.5 WARRANTY

§ A.3.5.1 Owner and Design–Builder agree and acknowledge that Owner is entering into this Agreement in reliance on Design–Builder’s represented expertise and ability to provide design/build services. Design–Builder agrees to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with Owner’s requirements and procedures.

§ A.3.5.2 The Design–Builder warrants to the Owner that materials and equipment furnished under the Design–Build Documents will be of good quality and new unless otherwise required or permitted by the Design–Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design–Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be

considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.5.3 The term "defective Work" means Work that does not conform to the requirements of the Design-Build Documents, including without limitation incomplete Work.

§ A.3.5.4 During the first year following the Date of Substantial Completion of the Work, the Owner's remedies for breach of warranty by the Design-Builder shall include, but not be limited to, correction of the Work pursuant to Section A.12.2.

§ A.3.5.5 The Design-Builder's duties shall not be diminished nor shall Design-Builder be released from any liability by any review and/or approval by Owner, it being understood that Owner's review and/or approval of documents shall be for informational purposes only and not for purposes of approving or determining the propriety of the documents and the Owner is ultimately relying upon the Design-Builder's skill and knowledge in performing the Work.

§ A.3.5.6 All warranties and obligations of the Design-Builder are intended not as limitations but are in addition to all other express and implied warranties. The Design-Builder and its surety, if any, shall be liable for the satisfaction and full performance of the warranties set forth in the Design-Build Documents and granted by applicable law. The Design-Builder's warranties and obligations under Section A.3.5 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.3.5.7 Notwithstanding any provision hereof to the contrary, the Design-Builder shall replace, at no expense to the Owner, all trees, plantings, shrubs, grass or landscape architecture provided by the Design-Builder on the site which became diseased or died within one year from the date of Substantial Completion or planting, whichever last occurs.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of this Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design–Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design–Builder’s responsibility to ascertain that the Work is in accordance with applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities.

§ A.3.7.4 If the Design–Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, the Design–Builder shall assume full responsibility for such Work and shall bear the costs of correction.

§ A.3.8 ALLOWANCES

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

§ A.3.8.2 Unless otherwise provided in the Design–Build Documents:

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

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN–BUILDER’S SCHEDULE

§ A.3.9.1 The Design–Builder, promptly after execution of this Design–Build Contract, shall prepare and submit for the Owner’s information the Design–Builder’s schedule for the Work. The schedule shall not exceed the current time limits and shall be in such detail as required by the Owner, shall be revised at least monthly, or at shorter appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design–Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner’s review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design–Builder shall prepare a schedule of submittals required by the Design–Build Documents for review and approval by the Owner, which schedule the Design–Builder shall update and keep current as necessary to maintain a current schedule of submittals. The schedule of submittals will identify submittals and samples in sufficient detail for the Owner to evaluate whether the schedule of submittals provides reasonable time for review by the Owner. The Design–Builder shall be responsible for sequencing. The schedule of submittals shall (1) be coordinated with the Design–Builder’s construction schedule, and (2) allow the Owner reasonable time to review submittals. The Design–Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Owner will review the schedule of submittals, raise appropriate concerns and the Design–Builder and the Owner will work together to agree to a schedule of submittals that serves the needs of the Work.

§ A.3.9.3 The Design–Builder shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design–Builder shall maintain at the site for the Owner, and shall delivered to Owner upon request, one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals. These shall be delivered to the Owner upon completion of the Work and before final payment.

§ A.3.10.2 The Design–Builder shall maintain all approved permit drawings in a manner that is accessible to the Owner and government inspectors. The Design–Builder shall mark and promptly deliver all approved drawings to the Owner before final payment.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design–Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design–Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design–Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for

which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall promptly review for compliance with the Design-Build Documents and approve Shop Drawings, Product Data, Samples and similar submittals, in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to construction limits acceptable to the Owner, within areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall keep areas outside the construction limits free from all construction debris, building materials and equipment likely to cause hazardous conditions. The Design-Builder acknowledges that the site may be within an active university campus and agrees to restrict access to the area within the construction limits by students, faculty, and others, and minimize construction traffic and other interference with activities in areas outside the construction limits. The Design-Builder shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. The Design-Builder shall not install temporary vending machines at the site without the written consent of the Owner, which the Owner may withhold in its sole discretion.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching unless otherwise required by the Design-Build Documents. Design-Builder shall carry patching of finished surfaces to natural breakpoints and otherwise perform patching to provide an unbroken appearance to the extent possible.

§ A.3.13.2 The Design-Builder shall not damage or endanger or affect the structural integrity of any portion of existing construction, the Work or fully or partially completed construction by the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such existing construction, construction by the Owner or a separate contractor except with written consent of the Owner, which the Owner may withhold in its sole discretion, and of such separate contractor. The

Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials. The Design-Builder shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust on streets and sidewalks around the site, and shall remove all spillage and tracking arising from the performance of the Work from such areas.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner safe and proper access to the Work in preparation and progress wherever located, shall provide safe and proper facilities for such access by the Owner for testing, inspection and observation, and shall secure and protect samples and testing equipment.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights (with counsel acceptable to the Owner) and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. The Design-Builder's obligations under this Section A.3.16 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify defend (with counsel acceptable to the Owner) and hold harmless the Owner, Owner's consultants, 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor,

a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they 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 reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.1.1 To the fullest extent permitted by law, the Design–Builder shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless the Owner against any assertion of claims, including without limitation any assertion of security interests for Work or materials or equipment for which Owner has paid the Design–Builder.

§ A.3.17.1.2 To the fullest extent permitted by law, the Design–Builder 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 reasonable attorneys’ fees related to any such actions) and judgments incurred by the Owner in connection with any labor–related activity arising from the Design–Builder’s performance of the Work. As used in this Design–Build Contract, "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 or in the vicinity of any other facility where the Owner conducts business. The Owner shall advise the Design–Builder if any labor–related activity occurs and the Design–Builder shall arrange for the legal representation necessary to protect the Owner’s interest, with counsel acceptable to Owner.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design–Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design–Builder, the Architect or a Contractor or a Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

§ A.13.7.3 The Design–Builder’s obligations under Section A.3.17 shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

§ A.3.18 PROGRESS REPORTS AND MEETINGS

§ A.3.18.1 PROGRESS REPORTS The Design–Builder shall prepare monthly and weekly progress reports in such form required by the Owner. Each progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefor and the new schedule, as well as the number of worker–days worked for each category of labor and the projected Work to be completed in the next succeeding month. Accompanying the progress report shall be an updated current Project schedule, and a listing and the status of all Change Orders, Modifications, bulletins, a forecast schedule of submittals and a transmittal log of submittals and other relevant documents. The Design–Builder shall

cooperate with the Owner to prepare such additional reports as required by the Owner.

§ A.3.18.2 PROGRESS MEETINGS The Design–Builder shall hold weekly progress meetings at the site, or at such other location, time and frequency as the Owner requests. The Design–Builder shall report the progress of the Work in detail with reference to the construction schedules. The Design–Builder shall attend the progress meetings, through qualified representatives as the Design–Builder deems appropriate, or as the Owner requests, to report the condition of its portion of the Work and to receive information.

§ A.3.19 PROJECT MANAGEMENT INFORMATION SYSTEM

§ A.3.19.1 The Owner may, at its sole option, direct the Design–Builder to use the Owner’s internet–based Project Management Information system. The functionality of this software may include, but is not limited to, the processing of Plan Reviews, Purchase Orders, Change Orders, Contract Amendments, Payment Applications, Requests for Information, and Document Management related to the Project.

§ A.3.19.2 If the Owner chooses to use its Project Management Information System for the Project, the Owner will provide a login license and initial software training to the Design–Builder’s designated Project representative(s) at no cost to the Design–Builder. 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 Design–Builder.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design–Build Contract terms, payment of money, extension of time or other relief with respect to the terms of this Design–Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design–Builder arising out of or relating to this Design–Build Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.2.1 At the next Project meeting following delivery of the notice of a Claim, or such earlier date as the parties may agree, the Owner shall issue its initial decision pursuant to Section A.4.2.2. If the Design–Builder does not accept the Owner’s initial decision, the Owner and the Design–Builder shall attempt to resolve such Claim through discussions between their respective representatives. The Owner may require the Architect, Contractors and Subcontractors to participate in such discussions with the Design–Builder. If a Claim is not resolved through discussions between the representatives of the Owner and the Design–Builder within 30 days after the initial meeting, then either party may proceed with mediation pursuant

to Section A.4.3. The terms of this Section A.4.1.2.1 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-BUILDER shall proceed diligently with performance of this Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than seven days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-BUILDER's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-BUILDER an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of this Design-Build Contract is justified, the Owner shall so notify the Design-BUILDER in writing, stating the reasons. Claims by the Design-BUILDER in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-BUILDER cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.4.1 If, in the course of the Work, the Design-BUILDER encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Design-Build Documents, the Design-BUILDER shall immediately suspend any operations that would affect them and shall promptly notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-BUILDER shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article A.7.

§ A.4.1.5 Claims for Additional Cost. If the Design-BUILDER wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design–Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design–Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of this Design–Build Contract by the Owner, (5) Owner’s suspension, or (6) other reasonable grounds, a Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design–Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design–Builder’s Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to this Design–Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding seven days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design–Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design–Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 Intentionally Deleted

(Paragraphs deleted)

§ A.4.1.11 If the enactment or revision of applicable laws, statutes, ordinances, codes, rules and regulations or official interpretations which govern the Project cause an increase or decrease of the Design–Builder’s cost of, or time required for, performance of the Work, the Design–Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design–Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design–Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Intentionally Deleted

§ A.4.2.2 Decision by Owner. Except for those claims arising under Section A.10.3, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design–Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Section A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and, if the parties fail to resolve their dispute through mediation, to litigation.

§ A.4.2.4 In the event of a Claim against the Design–Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design–Builder’s default, the Owner may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic’s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to this Design–Build Contract, except those waived as provided for in Sections A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to litigation. The terms of this Section A.4.3.1 shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to this Design–Build Contract and with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint in litigation proceedings but, in such event, mediation shall proceed in advance litigation, 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.

§ A.4.3.3 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.

(Paragraphs deleted)

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ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 COMPETITIVE SELECTION PROCESS

§ A.5.1.1 The Design-Builder shall obtain at least three competitive, sealed proposals or bids for each portion of the Work from potential Contractors or suppliers acceptable to the Owner, one of which may be the Design-Builder, as provided in Section A.5.2.

§ A.5.1.2 The Owner and the Design-Builder will jointly open and review proposals or bids, including any proposal or bid the Design-Builder submits on its own behalf. The Owner will determine, with advice from the Design-Builder, which proposals or bids will be accepted.

§ A.5.2 ALTERNATIVE SELECTION AND PERFORMANCE The Owner may allow the Design-Builder to perform portions of the Work with its own personnel under the following circumstances:

- .1 The Design-Builder shall have the right to submit one of the three sealed competitive bids or proposals on its own behalf for any portion of the Work that the Design-Builder wants to perform with its own personnel, provided the Design-Builder shall obtain at least two competitive, sealed proposals or bids from other potential Subcontractors for those portions of the Work and the Design-Builder shall comply with the submittal and selection requirements applicable to all potential Subcontractors. The Design-Builder shall deliver the sealed bids to Owner for opening; the Design-Builder shall deliver to Owner its sealed bid at least 24 hours prior to bid opening. The Owner shall determine which bids or proposals to accept for the Work.
- .2 The Owner may allow the Design-Builder to perform portions of the Work with its own forces without obtaining competitive bids or proposals, if for those portions of the Work (1) the Design-Builder specifically identified the Work as "Self-Performed Work" in the Proposal, (2) the Design-Builder disclosed its hourly wage rates in the Proposal, (3) the Design-Builder included the portion of the Work as a separate line item in the Final Guaranteed Maximum Price proposal, and (4) the Design-Builder obtains competitive bids or proposals for materials, supplies, and equipment included in the portion of the Work.
- .3 If the Design-Builder submits to the Owner a specific proposal to self-perform Work in accordance with the Design-Build Documents, such proposal shall include the following (a) a guaranteed maximum price for such Work based upon the cost of the work plus overhead and profit separately identified in the proposal, (b) a breakdown of the subcontracted portions of such self-performed work categories and materials or equipment to be purchased from third parties, which shall be based on competitive bids or proposals, and (c) a detailed breakdown of the labor component of such work to be performed by the Design-Builder's own work force (listing estimated hours and rates). Design-Builder shall not be permitted to use any contingency for such self-performed work in the event that the GMP for such self-performed work is exceeded, however, Design-Builder is permitted to include an appropriate contingency within the GMP for such self-performed work.

- .4 The Owner may, in the Owner's sole discretion, allow the Design-Builder to self-perform portions of the Work with its own forces without obtaining competitive bids or proposals, if the Owner determines that circumstances warrant an exception to the Owner's policy favoring a competitive selection process.

§ A.5.3 FORMS OF AGREEMENTS WITH CONTRACTORS

§ A.5.3.1 Any part of the Work performed for the Design-Builder by a Contractor or its Subcontractor at any tier shall be pursuant to a written agreement between the Design-Builder and such Contractor (or the Contractor and its Subcontractor at any tier), on a form of agreement satisfactory to the Owner. Each such agreement shall require that such Work be performed in accordance with the Design-Build Documents.

§ A.5.3.2 Each agreement between the Design-Builder and a Contractor shall require each Contractor, to the extent of the Work to be performed by the Contractor, to be bound to the Design-Builder by terms of the Design-Build Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Design-Builder's Work, that the Design-Builder, by the Design-Build Documents, assumes toward the Owner. Each agreement for a portion of the Work shall preserve and protect the rights of the Owner under the Design-Build Documents with respect to the Work to be performed by the Design-Builder so that subcontracting thereof will not prejudice such rights, and shall allow to the Contractor, unless specifically provided otherwise in the agreement, the benefit of all rights, remedies and redress against the Design-Builder that the Design-Builder, by the Design-Build Documents, has against the Owner. The Design-Builder shall make available to each proposed Contractor, prior to the execution of the agreement, copies of the Design-Build Documents to which the Contractor will be bound, and, upon written request of the Contractor, identify to the Contractor terms and conditions of the proposed agreement that may be at variance with the Design-Build Documents. Contractors will similarly make copies of applicable portions of such documents available to their respective proposed Subcontractors.

§ A.5.3.3 The Design-Builder shall submit to Owner copies of all executed agreements for any part of the Work, including subsequent Modifications, within seven days of date of the execution, together with Certificates of Insurance and Performance and Payment Bonds, as required by the Design-Build Documents.

§ A.5.4 Intentionally Deleted

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of this Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and

- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Design-Build Contract.

When the Owner accepts the assignment of an agreement for a portion of the Work, the Owner shall assume the Design-Builder's rights and obligations, provided the Design-Builder shall not be released from its obligations under that agreement or to the Owner under the Design-Build Contract.

§ A.5.5.2 Intentionally Deleted

§ A.5.5.3 Upon such assignment to the Owner under this Section A.5.5, the Owner may further assign the agreement to a successor design-builder or other individual or entity.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 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 or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement, subject to approval by the Owner. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder

shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of the separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ A.6.2.4 The Design-Builder shall promptly remedy damage caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors. If such separate contractor initiates legal or other proceedings against the Owner on account of any damage alleged to have been caused by the Design-Builder, the Owner shall notify the Design-Builder, and the Design-Builder shall defend such proceedings at its own expense, with counsel acceptable to the Owner, and if any judgment or award against the Owner arises therefrom, the Design-Builder shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Design-Builder. The Design-Builder's obligations under this Section A.6.2.4 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall be entitled to reimbursement from the Design-Builder.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of this Design-Build Contract, and without invalidating this Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

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

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder (other than a change required due to an act or omission of the Design-Builder) and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

(Paragraph deleted)

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES AND CHANGE ORDER PRICING

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

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

§ A.7.3.3 If a Change Order or Construction Change Directive provides for an adjustment to the Contract Sum and the Design-Build Documents do not provide unit prices or another specific basis for adjustment, then the adjustment shall be based on the following methods, as determined by the Owner in the Owner's sole discretion:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation pursuant to Section A.7.3.6; or;
- .2 Cost of the Work, to be determined in accordance with the Design-Build Documents, plus a mark-up as provided in Section A.7.3.6.

(Paragraphs deleted)

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design–Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design–Builder’s agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design–Builder indicates the agreement of the Design–Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6

(Paragraphs deleted)

CHANGE ORDER PROPOSAL AND CHANGE ORDER PRICING

§ A.7.3.6.1 Upon request by the Owner, or initiation of a Change Order by the Design–Builder pursuant to Sections A.7.5 or A.7.6, the Design–Builder shall submit a Change Order Proposal identifying proposed changes in Contract Time and Contract Sum. If the Design–Builder proposes an adjustment in Contract Time, the Design–Builder shall submit an updated Project schedule and schedule of submittals. Adjustments to the Contract Sum for the purposes of this Section A.7.3.6 shall be limited to the Cost of the Work, as defined in Exhibit B, plus the mark–up described in Design–Builder’s proposal as modified by Owner (the "Change Order Mark–up"), subject to the following:

- .1 The Change Order Proposal shall propose a lump sum adjustment in the Contract Sum, based on the Design–Builder’s estimated increase or decrease in the Cost of the Work attributable to the Change plus the applicable Change Order Mark–up, if any.
- .2 The Design–Builder shall not be entitled to any mark–up on the Cost of the Work attributable to a change in the Work (including an increase in the Design–Builder’s Fee, if any), until the cumulative value of accepted Change Orders exceeds 5% of the original Contract Sum.
- .3 Notwithstanding anything to the contrary in the definition of Cost of the Work in the Agreement, the Design–Builder and Subcontractors shall not apply the Change Order Mark–up to sales and use tax, if any.
- .4 For Change Order Work performed by Subcontractors, the Change Order amount shall be the cumulative Cost of the Work of each Subcontractor and Sub–subcontractor at any tier, plus the applicable Change Order Mark–up; the Change Order Mark–up shall be allocated among the Subcontractors and Sub–subcontractors as the Subcontractors and the Sub–subcontractors may agree.
- .5 If a Change Order or Construction Change Directive is issued exclusively or primarily for purchasing equipment or furnishings, or any other purpose that would not substantially affect the labor or services to be provided or the overhead costs to be incurred by the Contractor, so that application of the Change Order Mark–up

would not be appropriate, the applicable Change Order Mark-up shall be equitably adjusted.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Intentionally Deleted

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

§ A.7.5 DESIGN-BUILDER INITIATED CHANGES IN THE WORK

§ A.7.5.1 The Design-Builder may submit a Change Order Proposal on its own initiative if the Design-Builder believes an interpretation of the Design-Build Documents constitutes a change in Work. The Change Order Proposal shall conform with Section A.7.3.6 and include a detailed description of the claimed change to the Work with appropriate references to the Design-Build Documents. If the Owner accepts the Change Order Proposal, the Owner shall issue a Change Order incorporating the Change Order Proposal. If the Owner rejects the Change Order Proposal, the date of the Design-Builder's receipt of notice that the Owner has rejected the Change Order Proposal commences the running of the time period during which the Design-Builder must submit a Notice of Claim pursuant to Section A.4.1.2.

§ A.7.6 SUBSTITUTION OF MATERIAL OR EQUIPMENT

§ A.7.6.1 The Design-Builder may request approval of a substitution of specified materials or equipment by submitting a Change Order Proposal which shall conform with Section A.7.3.6 and include a description of the materials or equipment to be substituted and of the materials or equipment required by the Design-Build Documents with reference to the sections requiring the materials or equipment. By requesting approval of a substitution of a specified materials or equipment, the Design-Builder represents that:

- .1 the Design-Builder has personally investigated the proposed materials or equipment and determined that it is equal or superior in all respects to that

- specified and will provide a more economical result without compromising quality or a higher quality result without a net increase in costs;
- .2 the Design-Builder will provide the same or better warranty for the substitution than for the materials or equipment initially specified;
 - .3 the cost data presented is complete and includes all related costs including redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
 - .4 the Design-Builder will coordinate the installation of the accepted substitute making such changes as may be required for the Work to be complete in all respects.

The above representations are a condition precedent to approval of any request for substitution, but the Owner shall not be required to approve the substitution because of such representations. The Owner shall not accept any substitution unless the Design-Builder approves and accepts responsibility for the substitution by incorporating the substitution in the Design-Build Documents. If the Design-Builder proposes a substitution that does not satisfy the requirements of this Section A.7.6.1, the Design-Builder shall be responsible for all costs incurred by the Owner in reviewing the request, whether or not the Owner accepts the proposed substitution.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

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

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined. The term "Business Day" as used in the Design-Build Documents shall mean and refer to any day that the University of Minnesota is open to the general public. In the event that a deadline for a party's performance hereunder falls on a day other than a Business Day, then such deadline shall be deemed extended to the next Business Day thereafter.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of this Design-Build Contract. By executing this Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design–Builder shall not commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design–Builder. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ A.8.2.3 The Design–Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. In the event the Project is substantially behind schedule and the Owner determines that the date of Substantial Completion is no longer achievable unless additional labor or overtime is used, the Design–Builder shall, upon the written direction of the Owner, provide such additional labor or overtime as may be necessary to bring the Project back on schedule; provided, however, (1) the Design–Builder shall not be entitled to an increase in the Contract Sum for overtime pay or other costs associated with such work to the extent the delay was caused by the Design–Builder or anyone for whom the Design–Builder is liable, and (2) failure of the Owner to give such direction shall not relieve the Design–Builder from its obligations to perform the Work in accordance with the schedule established in this Design–Build Contract.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design–Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work as reflected by Change Order or Construction Change Directive, or by unavoidable delay or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

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

§ A.8.3.4 For purposes of Section A.8.3.1, "unavoidable delay" means only the following:

- .1 abnormally inclement weather, earthquake, flood, cloudburst, cyclone, tornado, or other cataclysmic phenomenon of nature beyond the power of the Design–Builder to foresee and defend against;
- .2 acts of the federal, state, or local government;
- .3 acts of a public enemy, including fires, explosions, chemical or biological acts;
- .4 acts of the Owner, including changes to the Work;
- .5 actions of separate contractors or utility owners performing work on the Project;
- .6 late delivery of materials resulting from strikes, lock–outs, freight embargoes, government acts, or sudden disaster of nature beyond the power of the Design–Builder or supplier to foresee or forestall; or

- .7 any other cause that the Design–Builder could not reasonably foresee at the time it contracted, did not have the power to control or prevent, and that occurs with no fault or negligence on the part of the Design–Builder or anyone for whom the Design–Builder is liable

§ A.8.3.5 The Design–Builder shall not be entitled to an extension of the Contract Time or additions to the Contract Sum for delays attributable to causes other than those listed in Section A.8.3.4, including without limitation, the following:

- .1 commonly occurring conditions such as time for curing concrete, drying of paint and other foreseeable construction–related time requirements;
- .2 failure to provide sufficient forces and equipment to maintain satisfactory progress;
- .3 late or slow delivery of materials from the supplier or fabricator when the material was available in warehouse stock, or when delivery was delayed by reasons of late ordering, financial considerations or other causes within the power of the Design–Builder to avoid; and
- .4 plant or equipment failure of less than four hours duration or of any duration due to the Design–Builder’s failure to provide and maintain the equipment in good mechanical condition or to provide for immediate emergency repairs.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Final GMP Proposal and, including authorized adjustments, is the maximum amount payable by the Owner to the Design–Builder for performance of the Work under the Design–Build Documents.

§ A.9.1.2 Notwithstanding anything to the contrary contained in the Design–Build Documents, the Owner may withhold any payment to the Design–Builder hereunder if and for so long as the Design–Builder fails to perform any of its obligations hereunder or otherwise is in default under any of the Design–Build Documents; provided, however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Design–Builder.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, the Design–Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design–Builder’s Applications for Payment. The schedule of values shall be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.2.2 The schedule of values shall show each major item of the Work and each subcontracted item of the Work as a separate line item on AIA Document G703, Application and Certificate of Payment, Continuation Sheet or other form acceptable to the Owner.

§ A.9.2.3 Before commencing the construction Work, and from time to time upon request from the Owner, the Design–Builder shall furnish a schedule of estimated periodic requests for payment for the Owner’s financial planning guidance. The schedule shall indicate the anticipated amount that will be requested each month, taking into consideration the Work schedule, expected deliveries, and the retained amount. The Design–Builder will not be bound to the estimated amounts, but should the actual requested amounts tend to vary substantially from the estimates, the Design–Builder shall promptly revise and deliver the schedule to the Owner.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least 30 days before the date established for each progress payment, the Design–Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required by the Owner, and supported by such data substantiating the Design–Builder’s right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage of 5% from all amounts due, including amounts for payments of Design–Builder’s fee and for Work performed by Design–Builder’s own personnel and by Contractors.

§ A.9.3.1.1 Intentionally Deleted

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work performed by a Contractor or material supplier or other parties providing services to the Design–Builder, unless the Design–Builder intends to use payment from the Owner to pay the Contractor or material supplier or other parties.

§ A.9.3.2 Unless otherwise provided in the Design–Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the 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 Design–Builder 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 site.

§ A.9.3.3 The Design–Builder 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 Design–Builder 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 Design–Builder’s knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design–Builder, Contractors, Subcontractors,

material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.3.4 The Design–Builder may request advance approval by the Owner of payment for materials and equipment stored off the site pursuant to Section A.9.3.2 which approval the Owner may grant or deny in the Owner’s sole discretion as follows:

- .1 The Owner shall be the sole judge as to the types of materials and equipment it will pay for while off the site and the conditions for the payment.
- .2 Notwithstanding any advance approval or anything herein to the contrary, the Owner will not pay for materials or equipment in stored off the site, which are:
 - .a damaged or otherwise defective;
 - .b off–the–shelf type materials;
 - .c held at the producer’s plant; or
 - .d produced over a period of time and normally would be installed to a schedule over a period of time as they are delivered, unless the Owner has caused a significant change in the schedule.
- .3 For consideration of payment for materials or equipment stored off the site, at the start of the Work the Design–Builder shall promptly submit a proposed list to the Owner for review and approval. The list shall include:
 - .a the item;
 - .b the reasons for storage off the site;
 - .c proposed storage location; and
 - .d anticipated delivery time to the off–site storage.
- .4 To qualify for consideration, the materials or equipment shall be at least one of the following:
 - .a a major item;
 - .b specially fabricated or produced for the Work of this Design–Build Contract and shall be in accordance with the Design–Build Documents; or
 - .c a critical material which is in short supply or which has an uncertain long lead time delivery schedule.
- .5 To qualify for consideration, all materials or equipment qualifying for consideration under Section A.9.3.4.4 must also be all of the following:
 - .a properly stored and protected, marked with the Project name and approved by the Owner;
 - .b certified by the Design–Builder, Contractor, Subcontractor or material supplier to be in storage and immediately available (when required);
 - .c examined by the Owner at the place of storage;
 - .d furnished at no additional cost or expense to the Owner except the time required to examine the materials or equipment, unless otherwise authorized by the Owner; and
 - .e insured to the satisfaction of the Owner.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner may, within seven days after receipt of the Design–Builder’s Application for Payment, issue to the Design–Builder a written acknowledgement of receipt of the Design–Builder’s Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent necessary to protect the Owner due to the Owner’s determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design–Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, shall nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design–Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third–party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design–Builder;
- .3 failure of the Design–Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Design–Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for corresponding amounts previously withheld.

§ A.9.5.3 If the Design–Builder disputes any determination by the Owner with regard to any Application for Payment, the Design–Builder nevertheless shall continue to prosecute the Work expeditiously.

§ A.9.5.4 The Owner shall not be deemed to be in breach of this Design–Build Contract by reason of the withholding of any payment pursuant to any provision of the Design–Build Documents.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design–Builder’s Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design–Build Documents.

§ A.9.6.2 The Design–Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design–Builder upon receipt of payment from the Owner, out of the amount paid to the Design–Builder on account of each such party’s respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design–Builder shall promptly pay each Contractor, no later than ten days after receipt of payment from the Owner, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design–Builder on account of the Contractor’s portion of the Work. The Design–Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner. The Design–Builder will promptly and publicly post on the site the listing of paid Applications for Payment to date, pursuant to Minnesota Statutes, Section 137.36. If the Design–Builder fails to pay a Contractor, or a Contractor fails to pay a Subcontractor amounts due within ten days of receipt of payment from the Owner, the Design–Builder shall pay the Contractor, and the Contractor shall pay the Subcontractor, the amount due to that Contractor or Subcontractor on demand, made at any time after the payment should otherwise have been made, plus interest of 1.5% per month commencing on the date payment was due for each day. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more shall be \$10, pursuant to Minnesota Statutes, Section 137.36.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor or Subcontractor at any tier except as may otherwise be required by law.

§ A.9.6.4.1 If the Owner does not make payment to the Design–Builder due to the fault of the Design–Builder but not due to the fault of a particular Contractor, the Design–Builder shall pay such Contractor on demand at any time after the payment should otherwise have been made, for its work to the extent completed and undisputed, less the retained percentage.

§ A.9.6.4.2 The Design–Builder shall pay each Contractor a just share of any insurance monies received by the Design–Builder under Article A.11, and the Design–Builder shall require each Contractor to make similar payments to their Subcontractors in accordance with this Section A.9.6.4.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment shall not constitute acceptance of Work.

§ A.9.6.7 Unless the Design–Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design–Builder for Work properly performed by Contractors and suppliers shall be held by the Design–Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract

with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Design-Builder may seek a Change Order or assert a Claim for adjustment of the Contract Sum or the Contract Time by the amount of the Time the Design-Builder stopped Work and Design-Builder's reasonable costs of shutdown, delay and start-up.

§ A.9.8 SUBSTANTIAL COMPLETION

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

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall promptly prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall promptly complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete. The Design-Builder shall promptly reimburse the Owner for all costs, if any, incurred by the Owner in connection with the reinspection.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall promptly prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) the responsibilities between the Owner and Design-Builder for

security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design–Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner’s inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design–Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design–Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete. When the Design–Builder considers a portion substantially complete, the Design–Builder shall promptly prepare and submit a list to the Owner as provided under Section A.9.8.2.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design–Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

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

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 The Design–Building shall provide written notice that the Work is ready for final inspection and acceptance and a final Application for Payment. When the Owner finds the Work acceptable under the Design–Build Documents and fully performed and the Design–Builder has delivered to the Owner a bound compilation of all warranties and operations manuals applicable to the Project and a complete set of the documents described in Section A.3.10, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design–Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design–Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design–Build Documents to remain in force after final payment is currently in effect and will remain in effect to the extent required by this Design–Build Contract, (3) a written statement

that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees. The Design-Builder's obligations under this Section A.9.10.2 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of warranties required by the Design-Build Documents; or
- .4 any other duties or obligations of the Design-Builder that by the terms of this Design-Build Contract survive the Owner's acceptance of the Work of this Design-Build Contract.

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

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design–Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of this Design–Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design–Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design–Builder or the Design–Builder’s Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

§ A.10.2.3 The Design–Builder shall erect and maintain, as required by existing conditions and performance of the Design–Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

§ A.10.2.5 The Design–Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design–Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design–Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design–Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design–Builder. The foregoing obligations of the Design–Builder are in addition to the Design–Builder’s obligations under Section A.3.17.

§ A.10.2.6 The Design–Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design–Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design–Builder, the Design–Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a qualified laboratory to verify the presence or absence of the material or substance reported by the Design–Builder. In the event such material or substance is found to be present, and the Owner elects to proceed with the Project, the Owner will have its consultant verify that such material or substance has been remediated as required by applicable law. If the Owner has elected to proceed with the Project, when the material or substance has been remediated as required by applicable law, Work in the affected area shall resume. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design–Builder’s reasonable additional costs of shutdown, delay and start–up.

§ A.10.3.3 To the fullest extent permitted by law, (including any limitation of liability under the Minnesota Torts Claim Act, Minnesota Statutes, Section 3.736) the Owner shall indemnify and hold harmless the Design–Builder, Contractors, Subcontractors, Architect, Architect’s consultants and the 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 in the affected area if in fact the material or substance exists on site as of the date of this Agreement and is not disclosed in the Design–Build Documents but only to the extent that such Claim, damage, loss or expense is attributable to bodily injury or death as described in Section A.10.3.1 or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design–Builder, Contractors, Subcontractors, Architect, Architect’s consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design–Builder. The terms of this Section A.10.4 shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

(Paragraph deleted)

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design–Builder shall act promptly to prevent threatened damage, injury or loss. The Design–Builder shall provide the Owner with prompt notice of any such emergency affecting the Project. Additional

compensation or extension of time claimed by the Design–Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 DESIGN–BUILDER’S LIABILITY INSURANCE

§ A.11.1.1 The Design–Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Such insurance shall be sufficient to protect the Design–Builder from claims set forth below and in Exhibit C which may arise out of or result from the Design–Builder’s operations and completed operations under this Design–Build Contract and for which the Design–Builder may be legally liable:

- .1 Claims under workers’ compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Design–Builder’s employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design–Builder’s employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Design–Builder’s obligations under Section 3.17;
- .9 Claims for bodily injury, property damage, loss of use of property, cleanup costs, environmental damage, completed operations and defense related to pollution; and
- .10 Claims involving professional liability for architectural, engineering, and other professional services provided by the Design–Builder, the Architect, and the Architect’s consultants; and
- .11 Other claims, if any, specifically described in attached Exhibit C.

§ A.11.1.2 The insurance required by Section A.11.1.1 shall be written for not less than the limits of liability specified in attached Exhibit C, the Design–Build Documents or required by law, whichever coverage is greater. Any aggregate limit under the Design–Builder’s primary commercial general liability insurance shall, by endorsement, apply to this Project separately. Coverages shall be written on an occurrence basis, unless otherwise required or permitted by the Design–Build Documents or specifically approved by the Owner in writing, shall be maintained without interruption from the date of commencement of the Work until the date of final payment or any later date required by the Design–Build Documents, and, with respect to the Design–Builder’s completed operations coverage, until the later of expiration of the period for correction of Work or three years after final payment by the Owner.

§ A.11.1.3 Certificates of insurance acceptable to the Owner, or at Owner's request, certified copies of the insurance policies and all endorsements substantiating the compliance with the insurance requirements set forth in this Design-Build Contract, including maintenance of required minimum insurance coverages and endorsements, shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance and from time to time on request of the Owner. These certificates and the insurance policies required by this Section A.11.1 shall contain a provision that coverages afforded under the policies will not be changed, canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner and the Owner shall be given ten days written notice of non-payment of premiums. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section A.9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section A.11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness.

§ A.11.1.4 The Design-Builder shall cause all liability coverage the Design-Build Documents require the Design-Builder to maintain (other than Professional Liability Insurance, if any) to include (1) the Owner, as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions during the Design-Builder's operations, and (2) the Owner as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions during the Design-Builder's completed operations. Such additional insured coverage shall be primary and any insurance obtained by the Owner (including self-insurance) shall be excess and noncontributory. The Owner shall not become responsible for payment of insurance premiums by reason of the naming of the Owner as an additional insured. As an additional insured the Owner shall have all the rights, coverages and limits afforded the Design-Builder under the policies. In the event that any insurer issues a reservation of rights for any additional insured, the additional insured shall be entitled to employ independent counsel at the Design-Builder's expense.

§ A.11.1.5 The Design-Builder shall cause all liability coverage the Design-Build Documents require the Design-Builder to maintain (other than Professional Liability Insurance, if any) to include by endorsement or otherwise (1) coverage for cross liability and separation of insureds (or their equivalents), and (2) waivers of subrogation and recovery rights against the Owner. For all such liability insurance coverage, the Design-Builder agrees to waive and shall require all Contractors and Subcontractors at any tier to waive all subrogation and recovery rights on behalf of themselves and their insurers against the Owner and its employees.

§ A.11.1.6 The Design-Builder may use an Umbrella or Excess Liability insurance policy to supplement the Design-Builder's policy limit to satisfy the full policy limits required by this Design-Build Contract. If these policies are not follow-form of the underlying coverage, the coverage shall, at a minimum, provide the coverage available on the underlying policies.

§ A.11.1.7 Damages covered by Design–Builder’s pollution liability shall include bodily injury, property damage, environmental damage, loss of use of property, governmental ordered cleanup costs, completed operations and defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for damages, as a result of pollution conditions (including mold and fungi) arising from Design–Builder’s operations under this Design–Build Contract, (a) at the site, (b) in the course of transporting materials to or from the site, or (c) at or emanating from off–site disposal sites to which the Design–Builder transported materials. The Design–Builder’s pollution liability coverage may be on a claims made basis. Claims–made provisions, if any, must have a retroactive date of policy inception. The Design–Builder shall maintain the specified coverage for a minimum of five years after Substantial Completion.

§ A.11.1.8 OTHER CONDITIONS OF DESIGN–BUILDER’S LIABILITY INSURANCE

§ A.11.1.8.1 The Design–Builder shall maintain required insurance coverage with companies authorized to do business in the State of Minnesota, with an A.M. Best rating of A–VII or better. It shall be a material breach of this Design–Build Contract if the insurance Design–Builder or any of its Contractors or any of its Contractor’s Subcontractors are required to maintain under this Design–Build Contract are cancelled, non–renewed, reduced in coverage below the level required in this Design–Build Contract, or an insurance carrier rating is downgraded below an A–VII, and Design–Builder or its Contractors or any of its Contractor’s Subcontractors fail to obtain qualifying alternative insurance from a qualified carrier before the effective date of such cancellation non–renewal, reduction, or downgrading (or as soon as possible thereafter if such cancellation non–renewal, reduction, or downgrading change occurs without notice to the Design–Builder or its Contractors or any of its Contractor’s Subcontractors.

§ A.11.1.8.2 The Owner shall have the right at the Owner’s sole discretion and expense to require the Design–Builder to obtain additional insurance coverages and endorsements to insure against particular hazards not specified under Article A.11 or elsewhere in the Design–Build Documents.

§ A.11.1.8.3 If Design–Builder fails to maintain the insurance this Design–Build Contract requires the Design–Builder to maintain, the Owner may, at its option and without waiving any rights under this Design–Build Contract, place such insurance, pay the premiums and recover the premium from the Design–Builder by any means available to the Owner, including off set against amounts owed to the Design–Builder.

§ A.11.1.8.4 The Design–Builder shall require its Contractors to maintain the same insurance the Design–Builder is required to maintain (including coverage, endorsements and limits) and, upon request by the Owner, to provide certificates of insurance or certified insurance policies and endorsements to the Owner.

§ A.11.1.8.5 The Owner, by requiring minimum insurance coverages, will not be deemed to limit any of the other obligations or liabilities of the Design–Builder. Design–Builder shall be responsible to pay the full amount of any deductibles or self–insured retentions of any

coverages. The Design-Builder and their insurer waive the right to assert the immunity of the Owner as a defense to any claims arising out the Project.

§ A.11.1.8.6 The Design-Builder shall submit to the Owner, within three days, copies of all reports of claims submitted to insurance carriers for bodily injury or property damages to third parties arising or alleged to have arisen on account of any Work done by Design-Builder, any Contractors or any Subcontractors on the Project.

§ A.11.2 OWNER'S LIABILITY INSURANCE

§ A.11.2.1 The Owner shall maintain the Owner's usual liability insurance. The Owner may in its discretion purchase insurance or self-insure.

§ A.11.3 PROPERTY INSURANCE

§ A.11.3.1 The Owner maintains, and shall maintain, a master "All Risks" Property Insurance Policy (the "All Risks Policy") that insures the "Builder's Risk" exposure for the interest of the Owner, the Design-Builder, Contractors and Subcontractors at any tier. Unless otherwise provided, in the Design-Build Documents, the Work under this Design-Build Contract will be insured under the All Risks Policy, subject to the limits, sublimits and exclusions of such policy and the provisions of the Design-Build Documents.

§ A.11.3.2 For the Work under construction, the All Risks Policy will insure against "all risk" of direct physical loss or damage to the property subject to the limits, sublimits and exclusions in the Policy. Builder's Risk coverage will be provided, as set forth in the All Risks Policy, against loss up to the policy limit on all coverages combined; on all materials and equipment intended for construction of and specific installation in the Project, when temporarily located away from the site at the risk of one of the insured parties, or in transit.

§ A.11.3.2.1 The All Risks Policy contains a loss deductible clause, in the amount of \$200,000 for each and every loss occurrence.

§ A.11.3.2.2 The Design-Builder shall be responsible for any loss not covered by the All Risks Policy, including any loss under the \$200,000 deductible for each and every loss occurrence. The Design-Builder shall provide (by purchase or self-insurance, at the Design-Builder's option) insurance to cover the deductible amounts.

§ A.11.3.2.3 The Owner's insurance carrier will be responsible for and pay the amount of any insured loss occurrence above any deductible amounts, up to the limits of the All Risks Policy as it may be applied to any covered loss.

§ A.11.3.2.4 The All Risks Policy shall not cover, and the Owner shall not be responsible for, loss or damage to property of any kind owned or leased by the Design-Builder, the Contractors, the Subcontractors, or their employees, servants, or agents that is not destined to become a permanent part of the Project.

§ A.11.3.3 BOILER AND MACHINERY INSURANCE

The All Risks Policy provides coverage for loss or damage to boilers and machinery, which specifically covers such insured objects during construction, erection, installation, assembly, and hot and cold testing, subject to the limits, sublimits, and exclusions in the All Risks Policy; this insurance shall include interests of the Owner, Design–Builder, Contractors and Subcontractors in the Work, and the Owner and Design–Builder shall be named insureds. The Design–Builder shall provide the Owner notice before testing, acceptance, use or startup of any equipment or installation, in ample time to allow the Owner to arrange for any required inspections.

§ A.11.3.4 WAIVERS OF SUBROGATION

§ A.11.3.4.1 The Owner and Design–Builder waive all rights against (1) each other and any of their Contractors, Subcontractors, agents and employees, each of the other, and (2) the separate Design–Builders described in Article 6, if any, and any of their Contractors, Subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design–Builder, as appropriate, shall require of the separate contractors described in Article 6, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The Design–Builder’s obligations in this Section A.11.3.4.1 shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

§ A.11.3.5 REPORTING AND ADJUSTING PROPERTY INSURANCE CLAIMS.

§ A.11.3.5.1 All Builder’s Risk losses and claims (including claims relating to Boilers and Machinery covered under the All Risks Policy) shall be immediately reported to the Owner by the Design–Builder. The Owner and Design–Builder shall promptly report all claims to their respective insurance carriers in accordance with the policy conditions.

§ A.11.3.5.2 In the event of any loss which is equal to or less than the \$200,000 deductible, the Design–Builder shall immediately repair, replace, rebuild or otherwise remedy the loss to prevent or minimize delay of the Project.

§ A.11.3.5.3 In the event of an loss in excess of the \$200,000 deductible, if no other special agreement is made and unless the Owner terminates this Design–Build Contract for convenience, replacement of damaged property shall be performed by the Design–Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.3.5.4 The Design–Builder shall cooperate with the Owner and the insurance adjusters to determine the value of any loss. All losses shall be adjusted by and be payable to the Owner. After the Design–Builder has received payment on a loss the Design–Builder shall pay each Contractor a just share of any uninsured loss the Design–Builder is responsible for, including deductible amounts, and of any insurance monies received by the Design–Builder, and by appropriate agreement, written where legally required for validity, shall require each Contractor to make payments to its Subcontractors in similar manner.

§ A.11.3.5.5 The Owner shall have no liability for the division, application and payment of proceeds from the insurance except for any improper management, allocations or disbursements made as a result of intentional or willful misconduct. If, after loss, no special agreement is made, replacement of damaged work may be ordered and executed, as provided for under Article A.7.

(Paragraphs deleted)

§ A.11.4 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.4.1 The Design–Builder, 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 100% of the full amount of the Contract Sum as security for the faithful performance of the Design–Build Documents, and the Labor and Material Payment Bond shall be in an amount equal to 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 Design–Build Documents. Such Bonds shall be on forms approved by the Owner and shall name the Owner as a primary obligee.

(Paragraphs deleted)

§ A.11.4.2 The sureties issuing the Bonds (individually, a "Surety," collectively "Sureties") shall be satisfactory to Owner, be licensed to issue the Bonds in the State of Minnesota, shall be rated by A.M. Best as A–minus or better, and shall be listed by the U.S. Treasury Department as acceptable for bonding federal projects. The amount of each Bond shall be within the limit set by the U.S. Treasury Department as the net limit on any single risk for the Surety, or if co–sureties are utilized, the amount of each Bond shall be within the total of such limits set for the Surety and any such co–sureties. There shall be no affiliation between the Design–Builder and the Bonding Agent or Agency.

§ A.11.4.3 In the event of Change Orders that result in an increase in the Contract Price, the penal sum of each Bond shall increase in the amount of such change in the Contract Price without obtaining the Surety’s consent up to a maximum of ten percent of the penal sum. Any aggregate increase in excess of 10% of the original penal sum shall require the Surety’s written consent.

§ A.11.4.4 Final acceptance of the Work shall not relieve the Design-Builder nor the Design-Builder's Surety from their obligations under this Design-Build Contract, including guarantees of materials, equipment, installation or service.

§ A.11.4.5 If for any reason the Bonds (or either of them) shall cease to be adequate security to the Owner in the Owner's reasonable discretion, the Design-Builder shall substitute acceptable bond(s) in such form and sum and issued by such other sureties as may be satisfactory to the Owner, in the Owner's reasonable discretion. The Design-Builder shall pay the premiums on such new bond(s). The Design-Builder shall be entitled to reimbursement of the cost of such substitution as a Change Order increasing the GMP only if the bonds provided by the Design-Builder meet the requirements of Design-Build Documents at the time the Owner requests such substitution. The Design-Builder acknowledges that further payments to Design-Builder may not be made until the new sureties have been qualified and approved.

(Paragraphs deleted)

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to the request of the Owner or any governmental authority, or to the requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner or a governmental authority has not specifically requested to examine prior to its being covered, the Owner or governmental authority may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or any governmental authority or failing to conform to the requirements of the Design-Build Documents or the requirements of a governmental authority, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.1.2 Additionally, the Design-Builder shall be responsible for and the Owner may deduct from payments or sums due to the Design-Builder hereunder (or if no such payments or sums are due or are insufficient, then the Owner may charge the Design-Builder) (1) the

reasonable value of the time of all Owner's personnel involved in the correction of such rejected Work, and (2) the reasonable value of the time of all Owner's personnel involved in reinspections of the corrected Work.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Article 3, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition. If the Design-Builder fails to correct non-conforming Work within a reasonable time during the one-year period for correction of the Work after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2 for an additional one-year period commencing on the date the Owner accepts the corrected Work.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear all direct and incidental cost associated with correction of defective Work, including (1) the cost of such tests as Owner may require to verify that such repairs, corrections and replacements comply with the requirements of the Design-Build Documents, (2) all costs incidental to any required redesign, repair, correction, replacement and testing, including the removal, replacement and reinstallation of equipment necessary to gain access, and (3) the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which

proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced by Change Order by the greater of (1) the reasonable cost of removing, correcting and/or completing the defective, nonconforming and/or incomplete Work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The internal laws of the State of Minnesota shall govern the validity, construction and enforceability of this Design-Build Contract, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Design-Build Contract shall be in the courts of record of the State of Minnesota and venue shall be in Hennepin County.

§ A.13.2 SUCCESSORS AND ASSIGNS

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

(Paragraph deleted)

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 All notices shall be sent to the Project Manager and designated representative of the party receiving notice, at the address, email address, or facsimile number provided by that party. Notices personally delivered or sent by electronic mail or facsimile before 4:00 p.m. CST on a Business Day shall be deemed delivered on such date; if personally delivered or transmitted by e-mail or facsimile after 4:00 p.m. CST, delivery shall be deemed effected as of the next Business Day, provided any delivery by e-mail or facsimile must be confirmed by a hard copy mailed on the date of transmittal. Notices sent by registered or certified mail shall be deemed to be given on the second Business Day from the date the same are deposited in said mail. Notices given in any other manner shall be deemed given on the date actually received.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Except to the extent expressly provided in this Design-Build Contract, duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. No election of any individual remedy by the Owner shall be deemed to be a waiver of additional remedies available under this Design-Build Contract or imposed or available at law.

§ A.13.4.3 If the Owner has the right to collect any amount from the Design-Builder under this Design-Build Contract, including the right to an adjustment of the Contract Sum, that right shall include the right to deduct any amount due from payments due the Design-Builder under this Design-Build Contract and, if payments due the Design-Builder under this Design-Build Contract are not sufficient to cover such amounts, the Owner may set off the amount due against any account or agreement with the Design-Builder and may bring legal action to collect the amount due.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. The Design-Builder shall make prompt arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, which arrangements shall include coordination, scheduling and safe access, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and, if applicable, the appropriate public authority, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by

the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to this Design-Build Contract within the time period specified by applicable law.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

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

- .1 issuance of an order of a court or other public authority having jurisdiction through no fault of the Design-Builder that requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped; or
- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents.

(Paragraphs deleted)

§ A.14.1.2 Intentionally Deleted

§ A.14.1.3 If one of the reasons described in Section A.14.1.1 exists, the Design-Builder may, upon 14 days' written notice to the Owner, (given after the Work has stopped for 30 consecutive days) terminate this Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit for completed Work (but not on overhead or anticipated profits for Work not yet executed) and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design–Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design–Builder because the Owner has persistently failed to fulfill the Owner’s obligations under the Design–Build Documents with respect to matters important to the progress of the Work, the Design–Builder may, upon 14 days’ written notice to the Owner, (given after the Work has been stopped for 60 consecutive days) terminate this Design–Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate this Design–Build Contract if the Design–Builder:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design–Builder and the Architect and Contractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority having jurisdiction;
- .4 files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of commencement of same, makes an assignment for the benefit of its creditors, has a receiver appointed to manage the Design–Builder’s assets or otherwise is or becomes insolvent;
- .5 fails to maintain schedules as required by the Design–Build Documents;
- .6 fails to perform the Work in accordance with the Design–Build Documents; or
- .7 otherwise is guilty of substantial breach of a provision of the Design–Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design–Builder and the Design–Builder’s surety, if any, seven days’ written notice, terminate employment of the Design–Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design–Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design–Builder, the Owner shall furnish to the Design–Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to

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the Design–Builder. If such costs and damages exceed the unpaid balance, the Design–Builder shall promptly pay the difference to the Owner, and include the right of set off by the Owner against any account or agreement with the Design–Builder.

§ 14.2.5 If, after notice of termination for cause, it is determined that none of the conditions set forth in Section A.14.2.1 have occurred, the termination shall be deemed to have been effected for the convenience of the Owner and the Design–Builder shall be paid in accordance with Section A.14.4.3.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design–Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Design–Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate this Design–Build Contract for the Owner’s convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner’s convenience, the Design–Builder shall:

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

§ A.14.4.3 In the event of termination for the Owner’s convenience prior to commencement of construction, the Design–Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services completed. In case of termination for the Owner’s convenience after commencement of construction, the Design–Builder 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 executed. The Design–Builder shall not be entitled to anticipated profits or overhead for Work not executed.

ARTICLE A.15 GMP PROPOSAL

§ A.15.1 The Design–Builder shall prepare a GMP Proposal for review and approval by the Owner, which GMP Proposal shall describe the construction Work to be performed by the Design–Builder and establish a Guaranteed Maximum Price and a schedule for completion of the Work, as follows (all references to the Design–Build Documents mean the Design–Build Documents as modified as of the referenced date):

§ A.15.1.1 The Design–Builder shall consult with the Owner to reconcile any actual or apparent errors, inconsistencies or omissions among the Design–Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, and between those items and the field measurements and observations of the Design–Builder pursuant to Section A.3.2.4.

§ A.15.1.2 After such consultation and reconciliation with the Owner, the Design–Builder shall provide the Owner with an evaluation of the Design–Build Documents, GMP Budget and schedule for completion of the Work, including recommendations for adjustments, if any, necessary to account for the reconciliation of errors, inconsistencies or omissions.

§ A.15.1.3 The Design–Builder and Owner shall incorporate adjustments to the Design–Build Documents, GMP Budget and schedule for completion of the Work approved by the Owner, if any, in a Modification to the Design–Build Documents.

§ A.15.1.4 The Design–Builder shall review with the Owner the value of alternative materials, building systems and equipment, together with other considerations based on the Design–Build Documents and aesthetics in developing the design and construction of the Project.

§ A.15.1.5 The Design–Builder shall develop a GMP Proposal, in consultation with the Owner, based on the Design–Build Documents and the Owner’s preferred alternative approach to the design and construction of the Project. The Design–Builder shall review drafts of the GMP Proposal from time to time to confirm that the Design–Builder is proceeding in accordance with the Owner’s expectations.

§ A.15.1.6 The GMP Proposal shall provide information to establish the design, cost and schedule for the Project in a form acceptable to the Owner, in sufficient detail to allow the Owner to approve the design and the Design–Builder to commit to a Guaranteed Maximum Price and proceed with the construction documents for and construction of the Project, including at least the following:

- .1 Statement of proposed Guaranteed Maximum Price, consistent with the GMP Budget, itemized in a Schedule of Values by Construction Specification Institute (“CSI”) section, and fees, establishing the maximum amount the Owner shall be required to pay the Design–Builder for the Cost of the Work plus the Design–Builder’s Fee (which shall include all compensation and expenses payable to the Design–Builder under this Design–Build Contract); identifying Work the Design–Builder proposes to perform with its own personnel and Work the Design–Builder

proposes to perform with Contractors hired by the Design–Builder; and including any proposed unit prices, allowances, and assumptions.

- .2 A critical path Project schedule, including schedule for decisions or other actions by the Owner, providing for Substantial Completion to occur no later than the date provided in Design–Build Documents.
- .3 A narrative description of the scope of the work and design intent, in sufficient detail to establish the arrangement of the different types and sizes of space, building masses and general building materials.
- .4 A schedule of the design documents upon which the Guaranteed Maximum Price is based, which design documents shall include at least the documents listed in Section A.15.1.7.
- .5 A description of the energy conservation measures and techniques incorporated into the Project.
- .6 A schedule of proposed variances to the University’s Standards and Procedures for Construction, if any, including a statement of the benefits of or justifications for the proposed variances and the impact of the proposed variances on the cost, schedule or quality of the Project.
- .7 A statement indicating which portions of the Project are to be commissioned and a description of the commissioning process for each, if any.
- .8 A Project directory including all contractors and subcontractors.

§ A.15.1.7 The design documents for the GMP Proposal shall be at a design development level, be consistent with the Design–Build Documents and consist of at least the following:

- .1 Preliminary design drawings, consisting of exterior and interior perspective sketches or elevations, and other drawings or graphics necessary to describe the character of the Project, including any features likely to have a significant impact on cost, use or appearance of the project;
- .2 Site plans, illustrating building location relative to the campus and abutting rights–of–way, landscape architecture, site drainage, site utilities, plazas, parking lots and other exterior improvements, if any;
- .3 Floor plans (including layout of the built–in furniture, fixtures and equipment);
- .4 Drawings delineating the structural, mechanical and electrical systems including utility layouts and connections;
- .5 Drawings of the major building sections;
- .6 Drawings of building details;
- .7 Written outline specifications; and
- .8 Other documents required to fix and describe the size, quality and character of the Project, its architectural, structural, mechanical and electrical systems and the materials and such other elements of the Project as may be appropriate.

§ A.15.1.8 By submitting a GMP Proposal to the Owner, the Design–Builder represents that (1) the Design–Builder has reviewed the Design–Build Documents and other information provided by the Owner, obtained such additional information from the Owner, direct observation of the

site and other sources that the Design–Builder deemed necessary and sufficient to prepare the GMP Proposal, (2) the GMP Proposal is consistent with the Project Criteria provided by the Owner, as modified with the consent of the Owner, and (3) the Design–Build Documents provide sufficient information to complete the Work for the Contract Sum (up to the Guaranteed Maximum Price) and within the Contract Time.

§ A.15.1.9 The Owner shall review the GMP Proposal and accept, reject or request modification of the GMP Proposal by written notice to the Design–Builder. If the Owner requests modification of the GMP Proposal, the Owner and the Design–Builder shall cooperate with each other to arrive at and agree upon such modification as expeditiously as possible; provided, however, that the Owner may at anytime elect to reject the GMP Proposal, as presented or later modified, and terminate this Design–Build Contract for convenience pursuant to Section A.14.4.

§ A.15.1.10 The Design–Builder shall prepare design documents and assist the Owner in preparing additional documentation of the GMP Proposal for presentation to the Owner’s Board of Regents, consisting of the following:

§ A.15.1.10.1 The Design–Builder shall assist the Owner in assembling all of the following, which assistance shall include providing the information required for items .4, .6, .7, .10, .11 and .12 below:

- .1 Basis for Request;
- .2 Change in Project Since Approval;
- .3 Gender Equity Impact Statement;
- .4 Scope of Project;
- .5 Environmental Issues;
- .6 Design Guidelines Response;
- .7 Cost Estimate;
- .8 Capital Funding;
- .9 Capital Budget Approvals;
- .10 Annual Operating and Maintenance Cost and Source of Revenue;
- .11 Time Schedule;
- .12 Name of Design–Builder and Architect; and
- .13 Recommendation.

§ A.15.1.10.2 Owner’s Power Point Presentation typically includes, but is not limited to, the following slides:

- .1 Site map locating the Project on Campus (or other location),
- .2 Site plan illustrating the Project on the site,
- .3 Project rational,
- .4 Project description,
- .5 Design guidelines response, and
- .6 Project illustrations which typically include perspective drawings (exterior and interior), elevation drawings, and floor plans.

ARTICLE A.16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

§ A.16.1 The Design-Builder shall not discriminate against Contractors, Subcontractors, or employees, or applicants for employment, contracting or subcontracting, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, veteran status, disability, sexual orientation, age, or membership in any other protected class under state, federal, or local law (the "Protected Classes"). The Design-Builder shall ensure that Contractors and Subcontractors do not discriminate against employees, Subcontractors or applicants for employment or Subcontracting because of membership in any Protected Class.

§ A.16.2 The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be furnished by the Owner setting forth the nondiscrimination provisions of Section A.16.1.

§ A.16.3 For contracts and subcontracts exceeding \$100,000, the Design-Builder shall designate an Equal Employment Opportunity Officer, who shall have authority and responsibility for the implementation of equal employment opportunity and affirmative action programs under this Design-Build Contract. The Design-Builder shall promptly submit to the Owner for approval a written copy of its program or certificate of compliance from the State of Minnesota within 14 days after execution of the Design-Build Contract.

§ A.16.4 In all solicitations or advertisements for employees, Contractors and Subcontractors placed by or on behalf of the Design-Builder, the Design-Builder shall state that all qualified applicants will receive consideration for employment without regard to membership in a Protected Class.

§ A.16.5 Before commencing the construction Work, the Design-Builder shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contracts or understandings, notices of its commitment to nondiscrimination and affirmative action to be posted in conspicuous places available to employees and applicants for employment.

§ A.16.6 The Design-Builder may be required to give evidence, upon the Owner's request, of persistent and prolonged efforts to increase the number of employees in Protected Classes. The Design-Builder shall make maximum use of apprentices to develop qualified minority and female personnel. The Design-Builder shall seek to fill labor shortages for apprentices and skilled journeymen by upgrading present employees including qualified minority and female employees.

§ A.16.7 The Design-Builder shall promptly furnish to the Owner, if requested, information and periodic reports in a format to be reasonably agreed upon, to substantiate its compliance with the requirements of the policy set forth in this Article A.16. The Design-Builder shall permit access to its books, records and accounts by the Owner for the purpose of ascertaining compliance with these provisions.

§ A.16.8 Noncompliance with any equal employment provision of this Design-Build Contract shall be a material default under the Design-Build Contract, which the Design-Builder shall cure within 14 calendar days of notice of default from the Owner. In addition to other remedies available, failure to cure shall entitle the Owner to liquidated damages in an amount equal to 5% of the Guaranteed Maximum Price. The Owner and the Design-Builder acknowledge and agree that the actual extent of losses the Owner will incur as a result of the failure of the Design-Builder to comply with the provisions of the Design-Build Contract cannot reasonably be determined as of the date of this Design-Build Contract, and the liquidated damages amount is reasonable under the circumstances and not a penalty.

§ A.16.9 The Design-Builder shall include the provisions of Sections A.16.1 through A.16.8 in all subcontracts to the second tier, unless exempted by the provisions of the policy set forth in this Article A.16. The Design-Builder shall take action necessary to enforce these provisions.

§ A.16.10 Contracts and subcontracts not exceeding \$2,500 are exempt from the reporting requirements of this Article, but not from compliance.

ARTICLE A.17 MINIMUM WAGE RATES

§ A.17.1 In accordance with Owner's policy, the Design-Builder, Contractors, and Subcontractors at any tier, agents, and other persons doing or contracting to do all or a part of the Work (hereinafter "Firms") shall pay laborers, workers and mechanics performing Work directly at the site at least the Prevailing Wage Rate applicable to their respective class of labor in the county in which the Project is located.

§ A.17.2 Firms shall pay laborers, workers and mechanics performing Work directly on a Project work site at least one and one-half times the hourly basic rate of pay for all hours worked in excess of the Prevailing Hours of Labor applicable to their respective class of labor in the county in which the Project is located. The Design-Builder is responsible for compliance by all Firms.

§ A.17.3 The term "Project," for purposes of this Article, means erection, construction, remodeling, alteration, or repairing of a building or other facility pursuant to a contract with the Owner including but not limited to, contracts financed in whole or part by the State of Minnesota and provided the contract sum is at least \$2,500 if only one trade or occupation is required to complete the Work, or the contract sum is at least \$25,000 if more than one trade or occupation is required to complete the Work.

§ A.17.4 The term "Prevailing Wage Rate" means the hourly basic rate of pay determined by the Minnesota Department of Labor and Industry ("Department") published annually as the Department's Wage Rate Determination Schedules plus contributions for health and welfare benefits, vacation benefits, pension benefits, and any other economic benefits paid to the largest number of workers engaged in the same class of labor in the county in which the Project is located.

§ A.17.5 The term "Prevailing Hours of Labor" refers to the number of hours of labor per day and per week worked within the county where the Project is located as determined by the Department. Holiday hours, vacation time, and sick leave are not counted in figuring overtime hours. The Design–Builder shall post and maintain a copy of the current Prevailing Wage Rate Schedules and Prevailing Hours of Labor for all classes of labor at the site in a conspicuous place accessible to all employees.

§ A.17.6 At the Owner’s request, Firms shall furnish to Owner copies of certified payroll records for all laborers, workers, and mechanics performing the Work at the site. The records shall be submitted to the Owner within seven business days of the date of the request. If the request covers future pay periods, or is ongoing in nature, the records shall be submitted to the Owner within seven business days of the last day of each pay period covered by the request. Whenever possible, the records should be submitted in electronic format, as a .pdf file.

§ A.17.7 The term "Certified Payroll" refers to payroll records properly completed and submitted on U.S. Department of Labor form WH–347. A copy of the form can be found in Appendix W to the Construction Standards, and on the U.S. Department of Labor’s website at <http://www.dol.gov/esa/forms/whd/wh347.pdf>.

§ A.17.8 If the Owner becomes aware that Firms are not paying Prevailing Wage Rates or time and one–half rates for hours exceeding Prevailing Hours of Labor, it will consider such non–compliance a material breach of this Design–Build Contract. The Design–Builder may cure the breach by immediately commencing payment or causing immediate commencement of payment at Prevailing Wage Rates and/or commencing payment or causing commencement of payment for hours worked in excess of Prevailing Hours of Work at one and one–half the basic rate, and promptly making restitution to laborers, workers, and mechanics who have been underpaid. In addition to other damages to which Owner may be entitled to on account of breach of contract, Design–Builder shall immediately pay Owner the total amount of the underpayment of wages plus 5%. The Owner and the Design–Builder acknowledge and agree that the actual extent of losses the Owner will incur as a result of a failure of the Contractor to comply with Article 17 cannot reasonably be determined as of the date of this Contract, and the liquidated damages amount is not a penalty, is reasonable under the circumstances and is specified so the Owner may reimburse the underpaid employees in connection with taking over and completing the Project.

§ A.17.9 The Design–Builder shall indemnify, defend (with counsel acceptable to the Owner) and hold the Owner harmless from all loss, cost or expense, including attorneys’ fees arising out of Firms’ failure to pay Prevailing Wage Rates or to pay one and one–half times the basic rate for hours worked in excess of Prevailing Hours of Labor. The Design–Builder’s obligations under this Section shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

§ A.17.10 By requiring the Design–Builder to pay the wages under Sections A.17.1 and A.17.2 or to pay any other minimum wage rates, the Owner does not represent that labor may be

employed at the minimum hourly wage. The Design–Builder shall investigate and verify the conditions at the location of the Work, to ascertain and insure the availability and cost of labor required to perform the Work.

§ A.17.11 A copy of the Wage Rate Determination schedules and the Prevailing Hours of Labor and Prevailing Wage Rates issued by the Department, applicable to the county in which the Project is located and the time period(s) when the Work will be performed, are included in the Project Manual and incorporated herein by this reference. The Design–Builder shall examine each wage rate schedule for completeness and accuracy. If any trade which will be used for the Work is omitted, or any prevailing wage rate, prevailing hours of labor, or hourly basic rate shown is incorrect, such omission and/or discrepancy shall be promptly reported to the Owner. If the only applicable schedule is that of the Department, and any rate or prevailing hours of labor is missing or appears incorrect, the Design–Builder shall obtain the proper rate from the Department. If necessary, the Design–Builder shall assist in obtaining a decision or clarification on incorrect or missing rates.

§ A.17.12 If the Design–Builder, a Contractor or a Subcontractor at any tier fails to pay any of its laborers or mechanics the Prevailing Wage Rate as provided herein, such Design–Builder, Contractor or Subcontractor shall (a) immediately make payment of such prevailing wages to the laborers or mechanics that were underpaid; and (b) indemnify, defend (with counsel acceptable to the Owner) and hold the Owner harmless from any claims, demands or causes of action (including reasonable attorneys’ fees and costs) arising from such failure. Additionally, if the Owner determines in its reasonable discretion and after reasonable notice to and communication with the Design–Builder, Contractor or Subcontractor that said Design–Builder’s, Contractor’s, or Subcontractor’s failure to so pay prevailing wages results from the intentional misconduct or gross negligence of such Design–Builder, Contractor or Subcontractor, then the Design–Builder shall be liable to and pay to the Owner (or the Owner may withhold from payments owed to the Design–Builder), as liquidated damages, a sum equal to 5% of the unpaid wages. The Owner and the Design–Builder acknowledge and agree that the actual extent of losses the Owner will incur as a result of the failure of the Design–Builder to comply with the prevailing wage provisions of this Design–Build Contract cannot reasonably be determined as of the date of this Design–Build Contract, and the liquidated damages amount is reasonable under the circumstances, and not a penalty and shall be in addition to but not a limit on any rights and remedies otherwise available to the Owner. The Design–Builder’s obligations under this Section shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

ARTICLE A.18 PROHIBITION AGAINST GRATUITIES

§ A.18.1 ACCEPTANCE OF ADVANTAGE

§ A.18.1.1 The Design–Builder acknowledges having read and understood Minnesota Statutes, Section 15.43, which is incorporated herein by reference as if fully set forth herein.

§ A.18.1.2 The Design–Builder 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 Design–Build Contract entitling the Owner to terminate for cause, pursuant to Section A.14.2.

§ A.18.1.3 By signing the Design–Builder’s Proposal for this Project and by signing the Design–Build Documents, the Design–Builder certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially or materially from this Design–Build Contract.

ARTICLE A.19 VENDOR PERFORMANCE PROGRAM

§ A.19.1 The Owner has a Design and Construction Vendor Performance Program (the "VP Program") applicable to providers of design and construction–related services and materials. The Design–Builder agrees to exhaust all rights and remedies afforded the Design–Builder under the terms of the VP Program as a condition precedent to making any claim against the Owner arising out of or relating to the Owner’s use or application of the VP Program. The Design–Builder acknowledges its receipt of a copy of the current VP Program which is available as "Document 00665" at www.cpm.umn.edu/bidding.html.

ARTICLE A.20 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT, AND SMALL BUSINESS PROGRAM

§ A.20.1 The Design–Builder acknowledges that the Owner has a policy to establish and implement Targeted Business, Urban Community Economic Development, and Small Business Program (the "TBE Programs"). A copy of this policy is available at <http://www1.umn.edu/regents/policies/administrative/TargetedBusiness.html>. The Design–Builder acknowledges that it has a copy of this policy. As a material consideration for the Owner entering into this Design–Build Contract, the Design–Builder agrees to satisfy this policy and to provide information regarding its actions intended to satisfy this policy that may be requested by the Owner. The Design–Builder agrees that it will fulfill the commitments with regard to the TBE Programs set forth on the Design–Builder’s University Form 00658–A–RFP submitted with the Design–Builder’s Proposal and, upon the Owner’s request, provide substantiation of compliance.

ARTICLE A.21 USE OF NAME OR LOGO

§ A.21.1 Design–Builder agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the Owner or the name of any representative of the Owner in any sales promotion work or advertising, or any form of publicity, without the written permission of the Owner in each instance.

ARTICLE A.22 MINNESOTA GOVERNMENT DATA PRACTICES ACT AND CONFIDENTIAL INFORMATION

§ A.22.1 The Design–Builder shall comply with Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") with regard to any information the Owner provides to the Design–Builder that is subject to the Act. The Design–Builder shall keep confidential any information it receives from the Owner or any other source during the course of its

performance that concerns the personal, financial or other affairs of the Owner, its Board of Regents, officers, employees or students. The Design–Builder shall return any documents or other information the Owner has supplied to the Design–Builder in connection with the goods supplied or services rendered under this Agreement, within 15 days after the completion of services, delivery of goods or upon request by the Owner, whichever occurs first.

§ A.22.2 The Design–Builder shall not use or disclose and shall not permit others to use or disclose Confidential Information without the Owner’s prior written approval. The Design–Builder may disclose the Confidential Information only to those employees that have a need to know the Confidential Information for the Project and only upon the following conditions: (1) the employees have each agreed in writing to the Design–Builder’s obligations under this Section A.22, and (2) the Design–Builder has provided the original written agreement to the Owner.

§ A.22.3 The term "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Design–Builder and its agents, employees, contractors, subcontractors 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 the Design–Builder can show (by contemporaneous written records) that the Design–Builder had it in its possession before beginning the Project and before disclosure by the Owner.

§A.22.4 The Design–Builder agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section A.22. The Design–Builder agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section A.22.

§ A.22.5 The Design–Builder and its employees, agents, contractors, subcontractors 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.

§ A.22.6 The Design–Builder’s obligations under this Section A.22 shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

ARTICLE A.23 AUDIT

§ A.23.1 The Design–Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design–Build Contract; the accounting and control systems shall be satisfactory to the Owner.

§ A.23.2 The 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 Design–Builder’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, proposals of successful and unsuccessful bidders, bid

recaps, etc.), original estimates, estimating Work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records"). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Design-Build Contract. In those situations where Design-Builder's Records have been generated from computerized data, the Design-Builder agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

§ A.23.3 The Design-Builder shall preserve the Records for a period of 12 years after final payment or for such longer period as required by law, provided, however, that if a Claim is asserted during said 12-year period, the Design-Builder shall retain all such Records until the Claim has been resolved.

§ A.23.4 The Design-Builder shall require all payees (including those entering into lump sum subcontracts and lump sum major material purchase orders) to comply with the provisions of this article by insertion of the requirements hereof in a written agreement between the Design-Builder and the payee.

§ A.23.5 The Owner and its accountants, auditors and agents shall be provided adequate and appropriate work space in order to conduct audits in compliance with this article, and the Owner and its accountants, auditors and agents agree to perform all of their work in that space and not elsewhere in the Design-Builder's offices, to not interact with the Design-Builder's employees, and to not otherwise unreasonably interfere or disrupt the work of the Design-Builder's employees.

§ A.23.6 If an Audit discloses overpricing or overcharges (of any nature) by the Design-Builder 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 Design-Builder. 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 Design-Builder.

ARTICLE A.24 NO-STRIKE PROVISION

§ A.24.1 If the Design-Builder provides unionized labor, then the Design-Builder shall have in effect throughout the performance of the Agreement, collective bargaining agreements that prohibit strikes, lock-outs, slow downs, work stoppages, and other actions that may delay and/or interfere with the timely completion of the Work. The Design-Builder shall require all Contractors and Subcontractors at any tier to include the same requirements in any collective bargaining agreements to which they are a party. The Design-Builder shall be liable for all direct and consequential damages attributable to any delay caused by the failure of the Design-

Builder to include, or require its Subcontractors to include, such requirements in such collective bargaining agreements.



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Additions and Deletions Report for **AIA[®] Document A141[™] – 2004 Exhibit A**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:57:56 on 07/24/2009.

PAGE 1

University of Minnesota Project Name:

University of Minnesota Project No.:

Design and construction of

...

(Name and location)

Regents of the University of Minnesota

400 Donhowe Building

319 15th Avenue Southeast

Minneapolis, MN 55455

PAGE 2

A.15 GMP PROPOSAL

A.16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

A.17 MINIMUM WAGE RATES

A.18 PROHIBITION AGAINST GRATUITIES

A.19 VENDOR PERFORMANCE PROGRAM

A.20 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT, AND SMALL BUSINESS PROGRAM

A.21 USE OF NAME OR LOGO

A.22 MINNESOTA GOVERNMENT DATA PRACTICES ACT AND CONFIDENTIAL INFORMATION

A.23 AUDIT

A.24 NO-STRIKE PROVISION

PAGE 4

The Design-Build Documents are identified in Section 1.1 and Article 8 of the Agreement.

...

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or ~~criteria,~~ criteria and major equipment layouts.

PAGE 5

§ A.1.1.8 NEUTRAL

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section ~~A.4.2.1.~~

The terms "law," "laws," "applicable laws," "applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities," and phrases of similar effect, shall mean the laws of any governmental entity having jurisdiction over the Project applicable to the performance, interpretation and enforcement of this Agreement.

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable ~~law, statute, ordinance, building code, rule or~~

~~regulation, the Design-Builder shall~~ laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities, the Design-Builder shall promptly notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation. statute, ordinance, code, rule or regulation or lawful order of any public authority.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, subject to the written approval of the Owner.

...

§ A.1.4.3 The parties acknowledge that the Design-Builder is responsible for furnishing Instruments of Service (as defined in Section A.1.6.1) that are consistent with the Design-Build Documents as of the date of execution of this Design-Build Contract, as modified with the Owner's written consent after that date. Accordingly, in the case of any inconsistency between, among or within any Design-Build Documents not clarified by an Addendum, the Design-Builder shall perform the Work in accordance with the Owner's interpretations. For purposes of determining whether the Design-Builder has performed the Work in accordance with the Design-Build Documents or whether the Owner or the Design-Builder is entitled to an adjustment in the Contract Sum as a result of any inconsistency in the Design-Build Documents after the date the Owner accepts the Final GMP Proposal, the parties shall deem the Final GMP Proposal to have required the Design-Builder to provide the higher cost alternative.

§ A.1.4.4 Where a Design-Build Document refers to standard specifications, such as Fed. Spec., ANSI, ASTM or other standards, if no date or edition is indicated, the latest or most recent edition of the standard, including all supplements, at the date of issue of that Design-Build Document shall apply to this Project.

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder or incorporated by reference in a Design-Build Document signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of ~~the this~~ Design-Build Contract by the Design-Builder is a representation that the Design-Builder has (1) visited the site, (2) become generally familiar with local conditions under which the Work is to be performed and correlated performed, (3) reviewed the

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents. If this Design-Build Contract is terminated for cause or convenience after payment to the Design-Builder of amounts due under this Design-Build Contract, the Design-Builder shall promptly deliver to the Owner a complete set of prints and electronic copies of the Instruments of Service, as completed through the date of termination.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional of the Owner's assumption of the Design-Builder's contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals. Upon completion of construction and before final payment, the Design-Builder shall forward to the Owner a revised set of prints and electronic copies of the drawings and specifications showing "as-built" conditions, including Change Orders and other modifications prepared by the Design-Builder.

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1. Any set of electronic copies of drawings or specifications the Design-Builder is required to deliver pursuant to this Design-Build Contract shall be in a format acceptable to the Owner.

PAGE 7

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may act with regard to this Design-Build Contract through its Board of Regents, the President, the Vice President for University Services and her authorized representative(s) in accordance with the policies of the Board of Regents and delegations of authority published in the President's Delegations of Authority Library, which can be viewed at the following web address: www.ogc1.umn.edu/delegations/library. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to and approved by the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. **Intentionally Deleted**

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. ~~Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.~~ The Owner shall furnish surveys described in Section A.2.2.2 and other information prepared by third parties for the Project to the extent the Owner deems necessary for the performance of the Design-Builder's services. The Owner makes no representations or warranties as to the accuracy of the information it obtains and provides to the Design-Builder pursuant to this Section A.2.2. In addition, the Owner may provide the Design-Builder access to the Owner's records, which may contain information about the site and adjacent land and improvements that was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information made available to the Design-Builder from the Owner's records.

§ A.2.2.2 ~~The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The to the extent such physical characteristics, legal limitations and utility locations can be determined by review of readily available records observation of surface conditions and other standard surveying practices. Upon the reasonable request of the Design-Builder, the surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, boundaries and contours of the site; locations, dimensions, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~

§ A.2.2.3 ~~The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.~~ **Intentionally Deleted**

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, ~~and~~ contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. Any such review shall be for the benefit of the Owner and shall not release the Design-Builder from its obligations to perform the Work in accordance with the Design-Build Documents.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and ~~inspections~~ inspections by governmental agencies necessary for proper execution and completion of the Work. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's ~~expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing~~ expense.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the ~~Design-Builder.~~ Design-Builder, provided the Owner shall not become responsible for, and the Design-Builder shall not be released from responsibility for, any fault or defect in the Work or non-conformity with the Design-Build Documents by reason of the Owner giving or failing to give any such notice.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents. **Intentionally Deleted**

PAGE 9

§ A.2.2.10 ~~The Subject to Section A.2.2.2, the~~ Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water ~~conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect.~~ conditions. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity ~~tests,~~ tests and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain ~~easements, zoning variances,~~ easements and legal authorizations regarding site utilization where essential to the ~~execution~~ completion of the Owner's ~~program.~~ Work.

§ A.2.3 OWNER REVIEW AND INSPECTION ~~OWNER REVIEW AND INSPECTIONS~~

§ A.2.3.1 The Owner ~~shall review and approve or take other appropriate action upon the Design-Builder's~~ may review the Design-Builder's documents and submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such and provide comments concerning

corrections or amendments to such documents and submittals to the Design-Builder. Owner's review of such documents and submittals is not conducted for the purpose of determining errors or omissions in the documents or submittals, the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. Rather, the Owner's review of the documents or submittals is for Owner's own benefit.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
 - .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
 - .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
 - .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
 - .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.
- The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2. Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents. The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with

Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.5 ~~The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.~~ appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner may delegate by written notice to the Design-Builder.

§ A.2.3.6 ~~The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.~~ conduct timely inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.3.7 ~~The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.~~

§ A.2.3.8 ~~The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.~~

§ A.2.3.9 ~~The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.~~

§ A.2.4.1 ~~If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.~~ entity.

PAGE 10

§ A.2.5.1 ~~If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build 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 after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, but in no event more than ten days after the written notice, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. The right of the Owner to carry out the Work pursuant to this Section A.2.5.1 shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity.

PAGE 11

§ A.3.1.3 The Design-Builder shall exercise the skill and care of a sophisticated design-builder with experience in projects similar to the Project.

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder. professions in the location where the Project is located.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request. The Owner shall be a third-party beneficiary of all such agreements.

...

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered. The Design-Builder shall resolve any such errors, inconsistencies or omissions to the Owner's reasonable satisfaction before preparing the GMP Proposal pursuant to Article A.15.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval a GMP Proposal in the form of Exhibit D as provided in Article A.15, which shall include design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the

Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed to the Owner in writing.

§ A.3.2.6 Upon the Owner's written approval of the ~~design documents~~ Final GMP Proposal submitted by the Design-Builder, the Design-Builder shall provide to the Owner construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed to the Owner in writing. Construction documents may include drawings, ~~specifications,~~ specifications and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved ~~design documents;~~ Final GMP Proposal;

PAGE 12

- .3 include documents customarily required for regulatory agency approvals.

The Design-Builder shall incorporate into the construction documents such corrections and amendments requested by Owner.

...

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall promptly prepare and file documents required to obtain necessary approvals of the construction documents from governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants and separate contractors, if any, shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

PAGE 13

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and ~~approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.~~ written approval of the construction documents.

§ A.3.3.2 The construction Work shall be in accordance with approved ~~submittals, documents,~~ except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents ~~or other submittals such as Shop Drawings, Product Data, Samples or other submittals~~ unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and ~~(1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation.~~ The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents ~~or other submittals such as Shop Drawings, Product Data, Samples or other submittals~~ by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents ~~or other submittals such as Shop Drawings, Product Data, Samples or similar submittals,~~ to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

PAGE 14

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the ~~Work,~~ using the Design-Builder's best skill and attention. ~~If the Design-Build Documents give Work. If the Owner gives~~ specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

...

§ A.3.3.9 The Design-Builder shall provide notices and verify utility locations pursuant to Minnesota Statutes, Chapter 216D. The Design-Builder shall bear all costs, losses and expenses the Owner may incur on account of the Design-Builder's failure to comply with Minnesota Statutes, Chapter 216D.

...

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the written consent of the Owner, which the Owner may withhold in its sole discretion, and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract-Work. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design-Builder shall use its best efforts to maintain labor peace for the duration of the Project.

§ A.3.4.4 The Design-Builder shall check and keep accounts of all materials and labor entering into the Work. The Design-Builder shall reject any materials that will not conform with the Design-Build Documents when properly installed.

§ A.3.4.5 The Design-Builder agrees that it is an independent Design-Builder and an employing unit subject as an employer to all applicable unemployment compensation, worker's compensation, occupational safety and health, or similar statutes so as to relieve the Owner of any responsibility or liability for safety or of keeping records, making reports or paying of any payroll taxes or contributions. The Design-Builder agrees to indemnify, defend (with counsel acceptable to the Owner) and hold the Owner harmless and reimburse it for any expense or liability incurred under said statutes in connection with the Design-Builder's employees, including but not limited to attorneys' fees. The Design-Builder's obligations under this Section A.3.4.5 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.3.4.6 The Design-Builder shall keep and have available all necessary records and make all payments, reports, collections and deductions and otherwise do any and all things so as to fully comply with all applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, all so as to fully protect the Owner from any and all responsibility or liability relating to (1) the production, purchase and sale, furnishing and delivering, pricing, and use or consumption of materials, supplies and equipment, (2) the hire, tenure or conditions of employment of employees and their hours of work and rates of the payment of their rate, (3) the keeping of records, making of reports, and payment of their rate, and (4) the keeping of records, making of reports, and the payment, collection and/or deduction of federal, state and local taxes, contributions, pension funds, welfare funds or similar assessments.

§ A.3.4.7 The Design-Builder shall bring to and store on the site only materials and equipment that are to be used directly in the Work. The Design-Builder shall promptly remove equipment from the site after it is no longer required for the Work. The Design-Builder shall be solely responsible for protection of materials and equipment stored at the site.

PAGE 15

~~§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered~~

defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Owner and Design-Builder agree and acknowledge that Owner is entering into this Agreement in reliance on Design-Builder's represented expertise and ability to provide design/build services. Design-Builder agrees to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with Owner's requirements and procedures.

§ A.3.5.2 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.5.3 The term "defective Work" means Work that does not conform to the requirements of the Design-Build Documents, including without limitation incomplete Work.

§ A.3.5.4 During the first year following the Date of Substantial Completion of the Work, the Owner's remedies for breach of warranty by the Design-Builder shall include, but not be limited to, correction of the Work pursuant to Section A.12.2.

§ A.3.5.5 The Design-Builder's duties shall not be diminished nor shall Design-Builder be released from any liability by any review and/or approval by Owner, it being understood that Owner's review and/or approval of documents shall be for informational purposes only and not for purposes of approving or determining the propriety of the documents and the Owner is ultimately relying upon the Design-Builder's skill and knowledge in performing the Work.

§ A.3.5.6 All warranties and obligations of the Design-Builder are intended not as limitations but are in addition to all other express and implied warranties. The Design-Builder and its surety, if any, shall be liable for the satisfaction and full performance of the warranties set forth in the Design-Build Documents and granted by applicable law. The Design-Builder's warranties and obligations under Section A.3.5 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.3.5.7 Notwithstanding any provision hereof to the contrary, the Design-Builder shall replace, at no expense to the Owner, all trees, plantings, shrubs, grass or landscape

architecture provided by the Design-Builder on the site which became diseased or died within one year from the date of Substantial Completion or planting, whichever last occurs.

PAGE 16

§ A.3.7.1 The Design-Builder shall secure and pay for building and all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of ~~the this~~ Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by ~~laws, ordinances, rules,~~ applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ~~ordinances, codes, rules and regulations,~~ statutes, ordinances, codes, rules and regulations and lawful orders of public authorities.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ~~ordinances, codes, rules and regulations,~~ the Design-Builder shall assume statutes, ordinances, codes, rules and regulations and lawful orders of public authorities, the Design-Builder shall assume full responsibility for such Work and shall bear the costs attributable to of correction.

PAGE 17

- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section ~~A.3.8.2.1~~ A.3.8.2.1, and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

...

§ A.3.9.1 The Design-Builder, promptly after execution of ~~the this~~ Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed the current time limits and shall be in such detail as required ~~under the Design-Build Documents,~~ by the Owner, shall be revised at least monthly, or at shorter appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare ~~and keep current a schedule of submittals required by the Design-Build Documents,~~ a schedule of submittals required by the Design-Build Documents for review and approval by the Owner, which schedule the Design-Builder shall update and keep

current as necessary to maintain a current schedule of submittals. The schedule of submittals will identify submittals and samples in sufficient detail for the Owner to evaluate whether the schedule of submittals provides reasonable time for review by the Owner. The Design-Builder shall be responsible for sequencing. The schedule of submittals shall (1) be coordinated with the Design-Builder's construction schedule, and (2) allow the Owner reasonable time to review submittals. The Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Owner will review the schedule of submittals, raise appropriate concerns and the Design-Builder and the Owner will work together to agree to a schedule of submittals that serves the needs of the Work.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner.

PAGE 18

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner, and shall delivered to Owner upon request, one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of ~~approved~~ Shop Drawings, Product Data, Samples and similar ~~required~~ submittals. These shall be delivered to the Owner upon completion of the ~~Work~~ Work and before final payment.

§ A.3.10.2 The Design-Builder shall maintain all approved permit drawings in a manner that is accessible to the Owner and government inspectors. The Design-Builder shall mark and promptly deliver all approved drawings to the Owner before final payment.

PAGE 19

§ A.3.11.5 The Design-Builder shall promptly review for compliance with the Design-Build Documents and approve ~~and submit to the Owner only those~~ Shop Drawings, Product Data, Samples and similar ~~submittals required by the Design-Build Documents with reasonable promptness and~~ submittals, in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving ~~and submitting~~ Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

...

§ A.3.12.1 The Design-Builder shall confine operations at the site to ~~areas permitted by law, ordinances, permits~~ construction limits acceptable to the Owner, within areas permitted by

applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall keep areas outside the construction limits free from all construction debris, building materials and equipment likely to cause hazardous conditions. The Design-Builder acknowledges that the site may be within an active university campus and agrees to restrict access to the area within the construction limits by students, faculty, and others, and minimize construction traffic and other interference with activities in areas outside the construction limits. The Design-Builder shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. The Design-Builder shall not install temporary vending machines at the site without the written consent of the Owner, which the Owner may withhold in its sole discretion.

...

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching unless otherwise required by the Design-Build Documents. Design-Builder shall carry patching of finished surfaces to natural breakpoints and otherwise perform patching to provide an unbroken appearance to the extent possible.

§ A.3.13.2 The Design-Builder shall not damage or endanger ~~a portion of or~~ affect the structural integrity of any portion of existing construction, the Work or fully or partially completed construction ~~of~~ by the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such existing construction, construction by the Owner or a separate contractor except with written consent of the Owner, which the Owner may withhold in its sole discretion, and of such separate ~~contractor; such consent shall not be unreasonably withheld.~~ contractor. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

PAGE 20

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under ~~the~~ this Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials. The Design-Builder shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust on streets and sidewalks around the site, and shall remove all spillage and tracking arising from the performance of the Work from such areas.

...

§ A.3.15.1 The Design–Builder shall provide the Owner safe and proper access to the Work in preparation and progress wherever located, shall provide safe and proper facilities for such access by the Owner for testing, inspection and observation, and shall secure and protect samples and testing equipment.

...

§ A.3.16.1 The Design–Builder shall pay all royalties and license fees. The Design–Builder shall defend suits or claims for infringement of copyrights and patent rights (with counsel acceptable to the Owner) and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design–Builder by the Owner. However, if the Design–Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design–Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. The Design–Builder’s obligations under this Section A.3.16 shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

...

§ A.3.17.1 To the fullest extent permitted by law, the Design–Builder shall indemnify defend (with counsel acceptable to the Owner) and hold harmless the Owner, Owner’s consultants, 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, property,~~ but only to the extent caused by the negligent acts or omissions of the Design–Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they 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 reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.1.1 To the fullest extent permitted by law, the Design–Builder shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless the Owner against any assertion of claims, including without limitation any assertion of security interests for Work or materials or equipment for which Owner has paid the Design–Builder.

§ A.3.17.1.2 To the fullest extent permitted by law, the Design–Builder 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 reasonable attorneys’ fees related to any such actions) and judgments incurred by the Owner in connection with any labor–related activity arising from the Design–Builder’s performance of the Work. As used in this Design–Build

Contract, "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 or in the vicinity of any other facility where the Owner conducts business. The Owner shall advise the Design-Builder if any labor-related activity occurs and the Design-Builder shall arrange for the legal representation necessary to protect the Owner's interest, with counsel acceptable to Owner.

PAGE 21

§ A.13.7.3 The Design-Builder's obligations under Section A.3.17 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.3.18 PROGRESS REPORTS AND MEETINGS

§ A.3.18.1 PROGRESS REPORTS The Design-Builder shall prepare monthly and weekly progress reports in such form required by the Owner. Each progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefor and the new schedule, as well as the number of worker-days worked for each category of labor and the projected Work to be completed in the next succeeding month. Accompanying the progress report shall be an updated current Project schedule, and a listing and the status of all Change Orders, Modifications, bulletins, a forecast schedule of submittals and a transmittal log of submittals and other relevant documents. The Design-Builder shall cooperate with the Owner to prepare such additional reports as required by the Owner.

§ A.3.18.2 PROGRESS MEETINGS The Design-Builder shall hold weekly progress meetings at the site, or at such other location, time and frequency as the Owner requests. The Design-Builder shall report the progress of the Work in detail with reference to the construction schedules. The Design-Builder shall attend the progress meetings, through qualified representatives as the Design-Builder deems appropriate, or as the Owner requests, to report the condition of its portion of the Work and to receive information.

§ A.3.19 PROJECT MANAGEMENT INFORMATION SYSTEM

§ A.3.19.1 The Owner may, at its sole option, direct the Design-Builder to use the Owner's internet-based Project Management Information system. The functionality of this software may include, but is not limited to, the processing of Plan Reviews, Purchase Orders, Change Orders, Contract Amendments, Payment Applications, Requests for Information, and Document Management related to the Project.

§ A.3.19.2 If the Owner chooses to use its Project Management Information System for the Project, the Owner will provide a login license and initial software training to the Design-Builder's designated Project representative(s) at no cost to the Design-Builder. 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 Design-Builder.

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of ~~the~~this Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to ~~the Design-Build Contract.~~ ~~Claims must be initiated by written notice.~~ this Design-Build Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

...

§ A.4.1.2.1 At the next Project meeting following delivery of the notice of a Claim, or such earlier date as the parties may agree, the Owner shall issue its initial decision pursuant to Section A.4.2.2. If the Design-Builder does not accept the Owner's initial decision, the Owner and the Design-Builder shall attempt to resolve such Claim through discussions between their respective representatives. The Owner may require the Architect, Contractors and Subcontractors to participate in such discussions with the Design-Builder. If a Claim is not resolved through discussions between the representatives of the Owner and the Design-Builder within 30 days after the initial meeting, then either party may proceed with mediation pursuant to Section A.4.3. The terms of this Section A.4.1.2.1 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of ~~the~~this Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build ~~Documents~~Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than ~~21~~seven days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of ~~the~~this Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract

Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.4.1 If, in the course of the Work, the Design-Builder encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall promptly notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article A.7.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of ~~the this~~ Design-Build Contract by the Owner, (5) Owner's ~~suspension~~ suspension, or (6) other reasonable grounds, a Claim shall be filed in accordance with this Section A.4.1.

PAGE 24

§ A.4.1.8 Injury or Damage to Person or Property. If either party to ~~the this~~ Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ seven days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

...

§ A.4.1.10 Intentionally Deleted

~~§ A.4.1.10 Claims for Consequential Damages.~~ Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

- ~~.1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~.2 — damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.~~

§ A.4.1.11 ~~If the enactment or revision of codes, laws or applicable laws, statutes, ordinances, codes, rules and regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.~~

...

§ A.4.2.1 Decision by Neutral. ~~If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.~~ **Intentionally Deleted**

§ A.4.2.2 Decision by Owner. ~~If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5,~~ **Except for those claims arising under Section A.10.3,** the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 ~~The initial decision pursuant to Sections A.4.2.1 and Section A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.~~ **and, if the parties fail to resolve their dispute through mediation, to litigation.**

PAGE 25

§ A.4.3.1 Any Claim arising out of or related to ~~the this~~ Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to ~~arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.~~ **litigation. The terms of this Section A.4.3.1 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.**

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to ~~the this Design-Build Contract and with the American Arbitration Association.~~ the person or entity administering the mediation. The request may be made concurrently with the filing of a ~~demand for arbitration or other binding dispute resolution~~ complaint in litigation proceedings but, in such event, mediation shall proceed in advance ~~thereof or of legal or equitable proceedings,~~ litigation, 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.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in ~~the place where the Project is located, unless another location is mutually agreed upon.~~ Hennepin County, Minnesota. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design Builder and any person or entity with whom the Owner or Design Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design Build Contract or not a party to an agreement with the Owner or Design Builder, except by written consent containing a specific reference to the Design Build Contract signed by the Owner and Design Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ A.5.1 Unless otherwise stated in the Design Build Documents or the bidding or proposal requirements, the Design Builder, as soon as practicable after award of the Design Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design Builder's proposal or in

~~substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.~~**COMPETITIVE SELECTION PROCESS**

§ A.5.1.1 The Design-Builder shall obtain at least three competitive, sealed proposals or bids for each portion of the Work from potential Contractors or suppliers acceptable to the Owner, one of which may be the Design-Builder, as provided in Section A.5.2.

§ A.5.1.2 The Owner and the Design-Builder will jointly open and review proposals or bids, including any proposal or bid the Design-Builder submits on its own behalf. The Owner will determine, with advice from the Design-Builder, which proposals or bids will be accepted.

~~§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.~~**ALTERNATIVE SELECTION AND PERFORMANCE** The Owner may allow the Design-Builder to perform portions of the Work with its own personnel under the following circumstances:

- .1 The Design-Builder shall have the right to submit one of the three sealed competitive bids or proposals on its own behalf for any portion of the Work that the Design-Builder wants to perform with its own personnel, provided the Design-Builder shall obtain at least two competitive, sealed proposals or bids from other potential Subcontractors for those portions of the Work and the Design-Builder shall comply with the submittal and selection requirements applicable to all potential Subcontractors. The Design-Builder shall deliver the sealed bids to Owner for opening; the Design-Builder shall deliver to Owner its sealed bid at least 24 hours prior to bid opening. The Owner shall determine which bids or proposals to accept for the Work.
- .2 The Owner may allow the Design-Builder to perform portions of the Work with its own forces without obtaining competitive bids or proposals, if for those portions of the Work (1) the Design-Builder specifically identified the Work as "Self-Performed Work" in the Proposal, (2) the Design-Builder disclosed its hourly wage rates in the Proposal, (3) the Design-Builder included the portion of the Work as a separate line item in the Final Guaranteed Maximum Price proposal, and (4) the Design-Builder obtains competitive bids or proposals for materials, supplies, and equipment included in the portion of the Work.
- .3 If the Design-Builder submits to the Owner a specific proposal to self-perform Work in accordance with the Design-Build Documents, such proposal shall include the following (a) a guaranteed maximum price for such Work based upon the cost of the work plus overhead and profit separately identified in the proposal, (b) a breakdown of the subcontracted portions of such self-performed work categories and materials or equipment to be purchased from third parties, which shall be based on competitive bids or proposals, and (c) a detailed breakdown of the labor

component of such work to be performed by the Design-Builder's own work force (listing estimated hours and rates). Design-Builder shall not be permitted to use any contingency for such self-performed work in the event that the GMP for such self-performed work is exceeded, however, Design-Builder is permitted to include an appropriate contingency within the GMP for such self-performed work.

- .4 The Owner may, in the Owner's sole discretion, allow the Design-Builder to self-perform portions of the Work with its own forces without obtaining competitive bids or proposals, if the Owner determines that circumstances warrant an exception to the Owner's policy favoring a competitive selection process.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

FORMS OF AGREEMENTS WITH CONTRACTORS

§ A.5.3.1 Any part of the Work performed for the Design-Builder by a Contractor or its Subcontractor at any tier shall be pursuant to a written agreement between the Design-Builder and such Contractor (or the Contractor and its Subcontractor at any tier), on a form of agreement satisfactory to the Owner. Each such agreement shall require that such Work be performed in accordance with the Design-Build Documents.

§ A.5.3.2 Each agreement between the Design-Builder and a Contractor shall require each Contractor, to the extent of the Work to be performed by the Contractor, to be bound to the Design-Builder by terms of the Design-Build Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Design-Builder's Work, that the Design-Builder, by the Design-Build Documents, assumes toward the Owner. Each agreement for a portion of the Work shall preserve and protect the rights of the Owner under the Design-Build Documents with respect to the Work to be performed by the Design-Builder so that subcontracting thereof will not prejudice such rights, and shall allow to the Contractor, unless specifically provided otherwise in the agreement, the benefit of all rights, remedies and redress against the Design-Builder that the Design-Builder, by the Design-Build Documents, has against the Owner. The Design-Builder shall make available to each proposed Contractor, prior to the execution of the agreement, copies of the Design-Build Documents to which the Contractor will be bound, and, upon written request of the Contractor, identify to the Contractor terms and conditions of the proposed agreement that may be at variance with the Design-Build Documents. Contractors will similarly make copies of applicable portions of such documents available to their respective proposed Subcontractors.

§ A.5.3.3 The Design-Builder shall submit to Owner copies of all executed agreements for any part of the Work, including subsequent Modifications, within seven days of date of the execution, together with Certificates of Insurance and Performance and Payment Bonds, as required by the Design-Build Documents.

~~§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.~~ **Intentionally Deleted**

PAGE 27

- .1 assignment is effective only after termination of ~~the~~ this Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Design-Build Contract.

When the Owner accepts the assignment of an agreement for a portion of the Work, the Owner shall assume the Design-Builder's rights and obligations, provided the Design-Builder shall not be released from its obligations under that agreement or to the Owner under the Design-Build Contract.

~~§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.~~ **Intentionally Deleted**

§ A.5.5.3 Upon such assignment to the Owner under this Section A.5.5, the Owner may further assign the agreement to a successor design-builder or other individual or entity.

PAGE 28

~~§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate AIA contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement.~~ agreement, subject to approval by the Owner. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

PAGE 29

~~§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction of the Design-Builder.~~ construction. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of the separate contractor's delays, improperly timed activities, damage to the Work or defective construction of a separate contractor. construction.

~~§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or~~

separate contractors. If such separate contractor initiates legal or other proceedings against the Owner on account of any damage alleged to have been caused by the Design-Builder, the Owner shall notify the Design-Builder, and the Design-Builder shall defend such proceedings at its own expense, with counsel acceptable to the Owner, and if any judgment or award against the Owner arises therefrom, the Design-Builder shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Design-Builder. The Design-Builder's obligations under this Section A.6.2.4 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

...

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible. be entitled to reimbursement from the Design-Builder.

...

§ A.7.1.1 Changes in the Work may be accomplished after execution of ~~the~~ this Design-Build Contract, and without invalidating ~~the~~ this Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

PAGE 30

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder (other than a change required due to an act or omission of the Design-Builder) and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

~~§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.~~

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES AND CHANGE ORDER PRICING

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

...

§ A.7.3.3 If a Change Order or Construction Change Directive provides for an adjustment to the Contract Sum and the Design-Build Documents do not provide unit prices or another specific basis for adjustment, then the adjustment shall be based on the following methods, as determined by the Owner in the Owner's sole discretion:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation pursuant to Section A.7.3.6; or;
- .2 Cost of the Work, to be determined in accordance with the Design-Build Documents, plus a mark-up as provided in Section A.7.3.6.

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

- ~~.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~
- ~~.2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;~~
- ~~.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~
- ~~.4 as provided in Section A.7.3.6.~~

PAGE 31

~~§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:~~

- ~~.1 additional costs of professional services;~~
- ~~.2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~
- ~~.3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~
- ~~.4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;~~

CHANGE ORDER PROPOSAL AND CHANGE ORDER PRICING

§ A.7.3.6.1 Upon request by the Owner, or initiation of a Change Order by the Design-Builder pursuant to Sections A.7.5 or A.7.6, the Design-Builder shall submit a Change Order Proposal identifying proposed changes in Contract Time and Contract Sum. If the Design-Builder proposes an adjustment in Contract Time, the Design-Builder shall submit an updated Project schedule and schedule of submittals. Adjustments to the Contract Sum for the purposes of this Section A.7.3.6 shall be limited to the Cost of the Work, as defined in Exhibit B, plus the mark-up described in Design-Builder's proposal as modified by Owner (the "Change Order Mark-up"), subject to the following:

- .1 The Change Order Proposal shall propose a lump sum adjustment in the Contract Sum, based on the Design-Builder's estimated increase or decrease in the Cost of the Work attributable to the Change plus the applicable Change Order Mark-up, if any.

- .2 The Design-Builder shall not be entitled to any mark-up on the Cost of the Work attributable to a change in the Work (including an increase in the Design-Builder's Fee, if any), until the cumulative value of accepted Change Orders exceeds 5% of the original Contract Sum.
- .3 Notwithstanding anything to the contrary in the definition of Cost of the Work in the Agreement, the Design-Builder and Subcontractors shall not apply the Change Order Mark-up to sales and use tax, if any.
- .4 For Change Order Work performed by Subcontractors, the Change Order amount shall be the cumulative Cost of the Work of each Subcontractor and Sub-subcontractor at any tier, plus the applicable Change Order Mark-up; the Change Order Mark-up shall be allocated among the Subcontractors and Sub-subcontractors as the Subcontractors and the Sub-subcontractors may agree.
- ~~.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~
- ~~.6 additional costs of supervision and field office personnel directly attributable to the change.~~If a Change Order or Construction Change Directive is issued exclusively or primarily for purchasing equipment or furnishings, or any other purpose that would not substantially affect the labor or services to be provided or the overhead costs to be incurred by the Contractor, so that application of the Change Order Mark-up would not be appropriate, the applicable Change Order Mark-up shall be equitably adjusted.

PAGE 32

~~§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.~~**Intentionally Deleted**

...

§ A.7.5 DESIGN-BUILDER INITIATED CHANGES IN THE WORK

§ A.7.5.1 The Design-Builder may submit a Change Order Proposal on its own initiative if the Design-Builder believes an interpretation of the Design-Build Documents constitutes a change in Work. The Change Order Proposal shall conform with Section A.7.3.6 and include a detailed description of the claimed change to the Work with appropriate references to the Design-Build Documents. If the Owner accepts the Change Order Proposal, the Owner shall issue a Change Order incorporating the Change Order Proposal. If the Owner rejects the Change Order Proposal, the date of the Design-Builder's receipt of notice that the Owner has rejected the Change Order Proposal commences the running of the time period during which the Design-Builder must submit a Notice of Claim pursuant to Section A.4.1.2.

§ A.7.6 SUBSTITUTION OF MATERIAL OR EQUIPMENT

§ A.7.6.1 The Design-Builder may request approval of a substitution of specified materials or equipment by submitting a Change Order Proposal which shall conform with Section A.7.3.6 and include a description of the materials or equipment to be substituted and of the materials or equipment required by the Design-Build Documents with reference to the sections requiring the materials or equipment. By requesting approval of a substitution of a specified materials or equipment, the Design-Builder represents that:

- .1 the Design-Builder has personally investigated the proposed materials or equipment and determined that it is equal or superior in all respects to that specified and will provide a more economical result without compromising quality or a higher quality result without a net increase in costs;
- .2 the Design-Builder will provide the same or better warranty for the substitution than for the materials or equipment initially specified;
- .3 the cost data presented is complete and includes all related costs including redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 the Design-Builder will coordinate the installation of the accepted substitute making such changes as may be required for the Work to be complete in all respects.

The above representations are a condition precedent to approval of any request for substitution, but the Owner shall not be required to approve the substitution because of such representations. The Owner shall not accept any substitution unless the Design-Builder approves and accepts responsibility for the substitution by incorporating the substitution in the Design-Build Documents. If the Design-Builder proposes a substitution that does not satisfy the requirements of this Section A.7.6.1, the Design-Builder shall be responsible for all costs incurred by the Owner in reviewing the request, whether or not the Owner accepts the proposed substitution.

PAGE 33

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined. The term "Business Day" as used in the Design-Build Documents shall mean and refer to any day that the University of Minnesota is open to the general public. In the event that a deadline for a party's performance hereunder falls on a day other than a Business Day, then such deadline shall be deemed extended to the next Business Day thereafter.

...

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of ~~the~~ this Design-Build Contract. By executing ~~the~~ this Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

~~§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner-Design-Builder. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.~~

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. In the event the Project is substantially behind schedule and the Owner determines that the date of Substantial Completion is no longer achievable unless additional labor or overtime is used, the Design-Builder shall, upon the written direction of the Owner, provide such additional labor or overtime as may be necessary to bring the Project back on schedule; provided, however, (1) the Design-Builder shall not be entitled to an increase in the Contract Sum for overtime pay or other costs associated with such work to the extent the delay was caused by the Design-Builder or anyone for whom the Design-Builder is liable, and (2) failure of the Owner to give such direction shall not relieve the Design-Builder from its obligations to perform the Work in accordance with the schedule established in this Design-Build Contract.

PAGE 34

~~§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, Work as reflected by Change Order or Construction Change Directive, or by unavoidable delay or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.~~

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§ A.8.3.4 For purposes of Section A.8.3.1, "unavoidable delay" means only the following:

- .1 abnormally inclement weather, earthquake, flood, cloudburst, cyclone, tornado, or other cataclysmic phenomenon of nature beyond the power of the Design-Builder to foresee and defend against;
- .2 acts of the federal, state, or local government;
- .3 acts of a public enemy, including fires, explosions, chemical or biological acts;
- .4 acts of the Owner, including changes to the Work;
- .5 actions of separate contractors or utility owners performing work on the Project;
- .6 late delivery of materials resulting from strikes, lock-outs, freight embargoes, government acts, or sudden disaster of nature beyond the power of the Design-Builder or supplier to foresee or forestall; or

- .7 any other cause that the Design-Builder could not reasonably foresee at the time it contracted, did not have the power to control or prevent, and that occurs with no fault or negligence on the part of the Design-Builder or anyone for whom the Design-Builder is liable

§ A.8.3.5 The Design-Builder shall not be entitled to an extension of the Contract Time or additions to the Contract Sum for delays attributable to causes other than those listed in Section A.8.3.4, including without limitation, the following:

- .1 commonly occurring conditions such as time for curing concrete, drying of paint and other foreseeable construction-related time requirements;
- .2 failure to provide sufficient forces and equipment to maintain satisfactory progress;
- .3 late or slow delivery of materials from the supplier or fabricator when the material was available in warehouse stock, or when delivery was delayed by reasons of late ordering, financial considerations or other causes within the power of the Design-Builder to avoid; and
- .4 plant or equipment failure of less than four hours duration or of any duration due to the Design-Builder's failure to provide and maintain the equipment in good mechanical condition or to provide for immediate emergency repairs.

PAGE 35

§ A.9.1.1 The Contract Sum is stated in the ~~Design-Build Documents~~ Final GMP Proposal and, including authorized adjustments, is the ~~total~~ maximum amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.1.2 Notwithstanding anything to the contrary contained in the Design-Build Documents, the Owner may withhold any payment to the Design-Builder hereunder if and for so long as the Design-Builder fails to perform any of its obligations hereunder or otherwise is in default under any of the Design-Build Documents; provided, however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Design-Builder.

...

§ A.9.2.1 Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values ~~may~~ shall be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.2.2 The schedule of values shall show each major item of the Work and each subcontracted item of the Work as a separate line item on AIA Document G703, Application and Certificate of Payment, Continuation Sheet or other form acceptable to the Owner.

§ A.9.2.3 Before commencing the construction Work, and from time to time upon request from the Owner, the Design-Builder shall furnish a schedule of estimated periodic requests for payment for the Owner's financial planning guidance. The schedule shall indicate the anticipated amount that will be requested each month, taking into consideration the Work schedule, expected deliveries, and the retained amount. The Design-Builder will not be bound to the estimated amounts, but should the actual requested amounts tend to vary substantially from the estimates, the Design-Builder shall promptly revise and deliver the schedule to the Owner.

PAGE 36

§ A.9.3.1 At least ~~ten~~ 30 days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if ~~required,~~ required by the Owner, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage ~~if provided for in the Design-Build Documents:~~ of 5% from all amounts due, including amounts for payments of Design-Builder's fee and for Work performed by Design-Builder's own personnel and by Contractors.

§ A.9.3.1.1 ~~As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.~~ **Intentionally Deleted**

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work ~~for which the Design-Builder does not intend to pay to~~ performed by a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay to the Design-Builder, unless the Design-Builder intends to use payment from the Owner to pay the Contractor or material supplier or other parties.

...

§ A.9.3.3 The Design-Builder warrants that title to all Work ~~other than Instruments of Service~~ covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.3.4 The Design-BUILDER may request advance approval by the Owner of payment for materials and equipment stored off the site pursuant to Section A.9.3.2 which approval the Owner may grant or deny in the Owner's sole discretion as follows:

- .1 The Owner shall be the sole judge as to the types of materials and equipment it will pay for while off the site and the conditions for the payment.
- .2 Notwithstanding any advance approval or anything herein to the contrary, the Owner will not pay for materials or equipment in stored off the site, which are:
 - .a damaged or otherwise defective;
 - .b off-the-shelf type materials;
 - .c held at the producer's plant; or
 - .d produced over a period of time and normally would be installed to a schedule over a period of time as they are delivered, unless the Owner has caused a significant change in the schedule.
- .3 For consideration of payment for materials or equipment stored off the site, at the start of the Work the Design-BUILDER shall promptly submit a proposed list to the Owner for review and approval. The list shall include:
 - .a the item;
 - .b the reasons for storage off the site;
 - .c proposed storage location; and
 - .d anticipated delivery time to the off-site storage.
- .4 To qualify for consideration, the materials or equipment shall be at least one of the following:
 - .a a major item;
 - .b specially fabricated or produced for the Work of this Design-Build Contract and shall be in accordance with the Design-Build Documents; or
 - .c a critical material which is in short supply or which has an uncertain long lead time delivery schedule.
- .5 To qualify for consideration, all materials or equipment qualifying for consideration under Section A.9.3.4.4 must also be all of the following:
 - .a properly stored and protected, marked with the Project name and approved by the Owner;
 - .b certified by the Design-BUILDER, Contractor, Subcontractor or material supplier to be in storage and immediately available (when required);
 - .c examined by the Owner at the place of storage;
 - .d furnished at no additional cost or expense to the Owner except the time required to examine the materials or equipment, unless otherwise authorized by the Owner; and
 - .e insured to the satisfaction of the Owner.

PAGE 38

§ A.9.4.1 The Owner ~~shall~~, may, within seven days after receipt of the Design-BUILDER's Application for Payment, issue to the Design-BUILDER a written acknowledgement of receipt of

the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

...

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent ~~reasonably~~ necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, ~~may shall~~ nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

...

- .7 ~~persistent~~ failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for corresponding amounts previously withheld.

§ A.9.5.3 If the Design-Builder disputes any determination by the Owner with regard to any Application for Payment, the Design-Builder nevertheless shall continue to prosecute the Work expeditiously.

§ A.9.5.4 The Owner shall not be deemed to be in breach of this Design-Build Contract by reason of the withholding of any payment pursuant to any provision of the Design-Build Documents.

PAGE 39

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the ~~Design-Builder,~~ Design-Builder upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, ~~upon~~ no later than ten days after receipt of payment from the Owner, ~~out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work,~~ the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner. The Design-Builder will promptly and publicly post on the site the listing of paid Applications for Payment to date, pursuant to Minnesota Statutes, Section 137.36. If the Design-Builder fails

to pay a Contractor, or a Contractor fails to pay a Subcontractor amounts due within ten days of receipt of payment from the Owner, the Design-Builder shall pay the Contractor, and the Contractor shall pay the Subcontractor, the amount due to that Contractor or Subcontractor on demand, made at any time after the payment should otherwise have been made, plus interest of 1.5% per month commencing on the date payment was due for each day. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more shall be \$10, pursuant to Minnesota Statutes, Section 137.36.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor or Subcontractor at any tier except as may otherwise be required by law.

§ A.9.6.4.1 If the Owner does not make payment to the Design-Builder due to the fault of the Design-Builder but not due to the fault of a particular Contractor, the Design-Builder shall pay such Contractor on demand at any time after the payment should otherwise have been made, for its work to the extent completed and undisputed, less the retained percentage.

§ A.9.6.4.2 The Design-Builder shall pay each Contractor a just share of any insurance monies received by the Design-Builder under Article A.11, and the Design-Builder shall require each Contractor to make similar payments to their Subcontractors in accordance with this Section A.9.6.4.

...

§ A.9.6.6 ~~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 Design-Build Documents.~~ payment shall not constitute acceptance of Work.

PAGE 40

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. ~~The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the~~ Design-Builder may seek a Change Order or assert a Claim for adjustment of the Contract Sum or the Contract Time by the amount of the Time the Design-Builder stopped Work and Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

...

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall promptly prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall promptly complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete. The Design-Builder shall promptly reimburse the Owner for all costs, if any, incurred by the Owner in connection with the reinspection.

...

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall promptly prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) the responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

PAGE 41

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any ~~stage when such portion is designated by separate agreement with the Design-Builder, stage,~~ provided such occupancy or use is ~~consented to by the insurer, if so required by the insurer, and~~ authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, ~~provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents.~~ complete. When the Design-Builder considers a portion substantially complete, the Design-Builder shall promptly prepare and submit a list to the Owner as provided under Section A.9.8.2. ~~Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.~~

...

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of ~~Work not complying with the requirements of the Design-Build Documents.~~ Work.

...

§ A.9.10.1 ~~Upon receipt of~~ The Design-Building shall provide written notice that the Work is ready for final inspection and acceptance and ~~upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when a final Application for Payment.~~ When the Owner finds the Work acceptable under the Design-Build Documents and fully ~~performed,~~ performed and the Design-Builder has delivered to the Owner a bound compilation of all warranties and operations manuals applicable to the Project and a complete set of the documents described in Section A.3.10, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will ~~not~~ be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, remain in effect to the extent required by this Design-Build Contract, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of ~~the~~ this Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees. The Design-Builder's obligations under this Section A.9.10.2 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

PAGE 42

- .2 failure of the Work to comply with the requirements of the Design-Build Documents; ~~or~~
- .3 terms of ~~special warranties required by the Design-Build Documents,~~ warranties required by the Design-Build Documents; or
- .4 any other duties or obligations of the Design-Builder that by the terms of this Design-Build Contract survive the Owner's acceptance of the Work of this Design-Build Contract.

PAGE 43

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of ~~the~~ this Design-Build Contract.

...

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

PAGE 44

§ A.10.3.2 The Owner shall obtain the services of a ~~licensed~~ qualified laboratory to verify the presence or absence of the material or substance reported by the ~~Design-Builder and, in Design-Builder.~~ In the event such material or substance is found to be present, to verify that it has been rendered harmless. ~~Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When and the Owner elects to proceed with the Project, the Owner will have its consultant verify that such material or substance has been remediated as required by applicable law. If the Owner has elected to proceed with the Project, when the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, remediated as required by applicable law, Work in the affected area shall resume. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.start-up.~~

§ A.10.3.3 To the fullest extent permitted by law, (including any limitation of liability under the Minnesota Torts Claim Act, Minnesota Statutes, Section 3.736) the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the 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 in the affected area if in fact the material or substance exists on site as of the date of ~~the Agreement, this Agreement and is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided but only to the extent that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death~~ injury or death as described in Section A.10.3.1 or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the ~~Design-Builder unless such materials or substances were required by the Design-Build Documents.~~ Design-Builder. The terms of this Section A.10.4 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

~~§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.~~

~~§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, act promptly to prevent threatened damage, injury or loss. The Design-Builder shall provide the Owner with prompt notice of any such emergency affecting the Project. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.~~

PAGE 45

~~§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.~~

DESIGN-BUILDER'S LIABILITY INSURANCE

~~§ A.11.1.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Such insurance shall be sufficient to protect the Design-Builder from claims set forth below and in Exhibit C which may arise out of or result from the Design-Builder's operations and completed operations under this Design-Build Contract and for which the Design-Builder may be legally liable:~~

- ~~.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;~~
- ~~.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;~~
- ~~.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;~~
- ~~.4 Claims for damages insured by usual personal injury liability coverage;~~
- ~~.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~
- ~~.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;~~
- ~~.7 Claims for bodily injury or property damage arising out of completed operations;~~
- ~~.8 Claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section 3.17;~~
- ~~.9 Claims for bodily injury, property damage, loss of use of property, cleanup costs, environmental damage, completed operations and defense related to pollution; and~~
- ~~.10 Claims involving professional liability for architectural, engineering, and other professional services provided by the Design-Builder, the Architect, and the Architect's consultants; and~~
- ~~.11 Other claims, if any, specifically described in attached Exhibit C.~~

§ A.11.1.2 The insurance required by Section A.11.1.1 shall be written for not less than the limits of liability specified in attached Exhibit C, the Design-Build Documents or required by law, whichever coverage is greater. Any aggregate limit under the Design-Builder's primary commercial general liability insurance shall, by endorsement, apply to this Project separately. Coverages shall be written on an occurrence basis, unless otherwise required or permitted by the Design-Build Documents or specifically approved by the Owner in writing, shall be maintained without interruption from the date of commencement of the Work until the date of final payment or any later date required by the Design-Build Documents, and, with respect to the Design-Builder's completed operations coverage, until the later of expiration of the period for correction of Work or three years after final payment by the Owner.

§ A.11.1.3 Certificates of insurance acceptable to the Owner, or at Owner's request, certified copies of the insurance policies and all endorsements substantiating the compliance with the insurance requirements set forth in this Design-Build Contract, including maintenance of required minimum insurance coverages and endorsements, shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance and from time to time on request of the Owner. These certificates and the insurance policies required by this Section A.11.1 shall contain a provision that coverages afforded under the policies will not be changed, canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner and the Owner shall be given ten days written notice of non-payment of premiums. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section A.9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section A.11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness.

§ A.11.1.4 The Design-Builder shall cause all liability coverage the Design-Build Documents require the Design-Builder to maintain (other than Professional Liability Insurance, if any) to include (1) the Owner, as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions during the Design-Builder's operations, and (2) the Owner as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions during the Design-Builder's completed operations. Such additional insured coverage shall be primary and any insurance obtained by the Owner (including self-insurance) shall be excess and noncontributory. The Owner shall not become responsible for payment of insurance premiums by reason of the naming of the Owner as an additional insured. As an additional insured the Owner shall have all the rights, coverages and limits afforded the Design-Builder under the policies. In the event that any insurer issues a reservation of rights for any additional insured, the additional insured shall be entitled to employ independent counsel at the Design-Builder's expense.

§ A.11.1.5 The Design-Builder shall cause all liability coverage the Design-Build Documents require the Design-Builder to maintain (other than Professional Liability Insurance, if any) to include by endorsement or otherwise (1) coverage for cross liability and separation of insureds (or their equivalents), and (2) waivers of subrogation and recovery rights against the Owner. For all such liability insurance coverage, the Design-Builder agrees to waive and shall require all Contractors and Subcontractors at any tier to waive all subrogation and recovery rights on behalf of themselves and their insurers against the Owner and its employees.

§ A.11.1.6 The Design-Builder may use an Umbrella or Excess Liability insurance policy to supplement the Design-Builder's policy limit to satisfy the full policy limits required by this Design-Build Contract. If these policies are not follow-form of the underlying coverage, the coverage shall, at a minimum, provide the coverage available on the underlying policies.

§ A.11.1.7 Damages covered by Design-Builder's pollution liability shall include bodily injury, property damage, environmental damage, loss of use of property, governmental ordered cleanup costs, completed operations and defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for damages, as a result of pollution conditions (including mold and fungi) arising from Design-Builder's operations under this Design-Build Contract, (a) at the site, (b) in the course of transporting materials to or from the site, or (c) at or emanating from off-site disposal sites to which the Design-Builder transported materials. The Design-Builder's pollution liability coverage may be on a claims made basis. Claims-made provisions, if any, must have a retroactive date of policy inception. The Design-Builder shall maintain the specified coverage for a minimum of five years after Substantial Completion.

§ A.11.1.8 OTHER CONDITIONS OF DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.1.8.1 The Design-Builder shall maintain required insurance coverage with companies authorized to do business in the State of Minnesota, with an A.M. Best rating of A-VII or better. It shall be a material breach of this Design-Build Contract if the insurance Design-Builder or any of its Contractors or any of its Contractor's Subcontractors are required to maintain under this Design-Build Contract are cancelled, non-renewed, reduced in coverage below the level required in this Design-Build Contract, or an insurance carrier rating is downgraded below an A-VII, and Design-Builder or its Contractors or any of its Contractor's Subcontractors fail to obtain qualifying alternative insurance from a qualified carrier before the effective date of such cancellation non-renewal, reduction, or downgrading (or as soon as possible thereafter if such cancellation non-renewal, reduction, or downgrading change occurs without notice to the Design-Builder or its Contractors or any of its Contractor's Subcontractors).

§ A.11.1.8.2 The Owner shall have the right at the Owner's sole discretion and expense to require the Design-Builder to obtain additional insurance coverages and endorsements to insure against particular hazards not specified under Article A.11 or elsewhere in the Design-Build Documents.

§ A.11.1.8.3 If Design-Builder fails to maintain the insurance this Design-Build Contract requires the Design-Builder to maintain, the Owner may, at its option and without waiving any rights under this Design-Build Contract, place such insurance, pay the premiums and recover the premium from the Design-Builder by any means available to the Owner, including off set against amounts owed to the Design-Builder.

§ A.11.1.8.4 The Design-Builder shall require its Contractors to maintain the same insurance the Design-Builder is required to maintain (including coverage, endorsements and limits) and, upon request by the Owner, to provide certificates of insurance or certified insurance policies and endorsements to the Owner.

§ A.11.1.8.5 The Owner, by requiring minimum insurance coverages, will not be deemed to limit any of the other obligations or liabilities of the Design-Builder. Design-Builder shall be responsible to pay the full amount of any deductibles or self-insured retentions of any coverages. The Design-Builder and their insurer waive the right to assert the immunity of the Owner as a defense to any claims arising out the Project.

§ A.11.1.8.6 The Design-Builder shall submit to the Owner, within three days, copies of all reports of claims submitted to insurance carriers for bodily injury or property damages to third parties arising or alleged to have arisen on account of any Work done by Design-Builder, any Contractors or any Subcontractors on the Project.

§ A.11.2 OWNER'S LIABILITY INSURANCE

§ A.11.2.1 The Owner shall maintain the Owner's usual liability insurance. The Owner may in its discretion purchase insurance or self-insure.

§ A.11.3 PROPERTY INSURANCE

§ A.11.3.1 The Owner maintains, and shall maintain, a master "All Risks" Property Insurance Policy (the "All Risks Policy") that insures the "Builder's Risk" exposure for the interest of the Owner, the Design-Builder, Contractors and Subcontractors at any tier. Unless otherwise provided, in the Design-Build Documents, the Work under this Design-Build Contract will be insured under the All Risks Policy, subject to the limits, sublimits and exclusions of such policy and the provisions of the Design-Build Documents.

§ A.11.3.2 For the Work under construction, the All Risks Policy will insure against "all risk" of direct physical loss or damage to the property subject to the limits, sublimits and exclusions in the Policy. Builder's Risk coverage will be provided, as set forth in the All Risks Policy, against loss up to the policy limit on all coverages combined; on all materials and equipment intended for construction of and specific installation in the Project, when temporarily located away from the site at the risk of one of the insured parties, or in transit.

§ A.11.3.2.1 The All Risks Policy contains a loss deductible clause, in the amount of \$200,000 for each and every loss occurrence.

§ A.11.3.2.2 The Design–Builder shall be responsible for any loss not covered by the All Risks Policy, including any loss under the \$200,000 deductible for each and every loss occurrence. The Design–Builder shall provide (by purchase or self–insurance, at the Design–Builder’s option) insurance to cover the deductible amounts.

§ A.11.3.2.3 The Owner’s insurance carrier will be responsible for and pay the amount of any insured loss occurrence above any deductible amounts, up to the limits of the All Risks Policy as it may be applied to any covered loss.

§ A.11.3.2.4 The All Risks Policy shall not cover, and the Owner shall not be responsible for, loss or damage to property of any kind owned or leased by the Design–Builder, the Contractors, the Subcontractors, or their employees, servants, or agents that is not destined to become a permanent part of the Project.

§ A.11.3.3 BOILER AND MACHINERY INSURANCE

The All Risks Policy provides coverage for loss or damage to boilers and machinery, which specifically covers such insured objects during construction, erection, installation, assembly, and hot and cold testing, subject to the limits, sublimits, and exclusions in the All Risks Policy; this insurance shall include interests of the Owner, Design–Builder, Contractors and Subcontractors in the Work, and the Owner and Design–Builder shall be named insureds. The Design–Builder shall provide the Owner notice before testing, acceptance, use or startup of any equipment or installation, in ample time to allow the Owner to arrange for any required inspections.

§ A.11.3.4 WAIVERS OF SUBROGATION

§ A.11.3.4.1 The Owner and Design–Builder waive all rights against (1) each other and any of their Contractors, Subcontractors, agents and employees, each of the other, and (2) the separate Design–Builders described in Article 6, if any, and any of their Contractors, Subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design–Builder, as appropriate, shall require of the separate contractors described in Article 6, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The Design–Builder’s obligations in this Section A.11.3.4.1 shall survive the Owner’s acceptance of the Work or termination of this Design–Build Contract.

§ A.11.3.5 REPORTING AND ADJUSTING PROPERTY INSURANCE CLAIMS.

§ A.11.3.5.1 All Builder's Risk losses and claims (including claims relating to Boilers and Machinery covered under the All Risks Policy) shall be immediately reported to the Owner by the Design-Builder. The Owner and Design-Builder shall promptly report all claims to their respective insurance carriers in accordance with the policy conditions.

§ A.11.3.5.2 In the event of any loss which is equal to or less than the \$200,000 deductible, the Design-Builder shall immediately repair, replace, rebuild or otherwise remedy the loss to prevent or minimize delay of the Project.

§ A.11.3.5.3 In the event of an loss in excess of the \$200,000 deductible, if no other special agreement is made and unless the Owner terminates this Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.3.5.4 The Design-Builder shall cooperate with the Owner and the insurance adjusters to determine the value of any loss. All losses shall be adjusted by and be payable to the Owner. After the Design-Builder has received payment on a loss the Design-Builder shall pay each Contractor a just share of any uninsured loss the Design-Builder is responsible for, including deductible amounts, and of any insurance monies received by the Design-Builder, and by appropriate agreement, written where legally required for validity, shall require each Contractor to make payments to its Subcontractors in similar manner.

§ A.11.3.5.5 The Owner shall have no liability for the division, application and payment of proceeds from the insurance except for any improper management, allocations or disbursements made as a result of intentional or willful misconduct. If, after loss, no special agreement is made, replacement of damaged work may be ordered and executed, as provided for under Article A.7.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1** — claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2** — claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3** — claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4** — claims for damages insured by usual personal injury liability coverage;
- .5** — claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

- ~~.6 — claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;~~
- ~~.7 — claims for bodily injury or property damage arising out of completed operations; and~~
- ~~.8 — claims involving contractual liability insurance applicable to the Design Builder's obligations under Section A.3.17.~~

~~§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design Build 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 date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.~~

~~§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design Builder with reasonable promptness in accordance with the Design Builder's information and belief.~~

~~§ A.11.3 OWNER'S LIABILITY INSURANCE~~

~~§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~

~~§ A.11.4 PROPERTY INSURANCE PERFORMANCE BOND AND PAYMENT BOND~~

~~§ A.11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design Builder, Contractors and Subcontractors in the Project. The Design Builder, 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 100% of the full amount of the Contract Sum as security for the faithful performance of the Design-Build Documents, and the Labor and Material Payment Bond shall be in an amount equal to 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 Design-Build Documents. Such Bonds shall be on forms approved by the Owner and shall name the Owner as a primary obligee.~~

~~§ A.11.4.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design Builder's services and expenses required as a result of such insured loss.~~

~~§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design Builder in~~

~~writing prior to commencement of the Work. The Design Builder may then effect insurance that will protect the interests of the Design Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

~~§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

~~§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.~~

~~§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~**§ A.11.4.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Design Build 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, Design Builder, Contractors and Subcontractors in the Work, and the Owner and Design Builder shall be named insureds. The sureties issuing the Bonds (individually, a "Surety," collectively "Sureties") shall be satisfactory to Owner, be licensed to issue the Bonds in the State of Minnesota, shall be rated by A.M. Best as A-minus or better, and shall be listed by the U.S. Treasury Department as acceptable for bonding federal projects. The amount of each Bond shall be within the limit set by the U.S. Treasury Department as the net limit on any single risk for the Surety, or if co-sureties are utilized, the amount of each Bond shall be within the total of such limits set for the Surety and any such co-sureties. There shall be no affiliation between the Design-Builder and the Bonding Agent or Agency.~~

~~**§ A.11.4.3 Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design Builder, Architect, the Design Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused. In the event of Change Orders that result in an increase in the Contract Price, the penal sum of each Bond shall increase in the amount of such change in the Contract Price without obtaining the Surety's consent up to a maximum of ten percent of the penal sum. Any aggregate increase in excess of 10% of the original penal sum shall require the Surety's written consent.~~

~~**§ A.11.4.4** If the Design Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design Builder by appropriate Change Order. Final acceptance of the Work shall not relieve the Design-Builder nor the Design-Builder's Surety from their obligations under this Design-Build Contract, including guarantees of materials, equipment, installation or service.~~

~~**§ A.11.4.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final~~

~~payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~ for any reason the Bonds (or either of them) shall cease to be adequate security to the Owner in the Owner's reasonable discretion, the Design-Builder shall substitute acceptable bond(s) in such form and sum and issued by such other sureties as may be satisfactory to the Owner, in the Owner's reasonable discretion. The Design-Builder shall pay the premiums on such new bond(s). The Design-Builder shall be entitled to reimbursement of the cost of such substitution as a Change Order increasing the GMP only if the bonds provided by the Design-Builder meet the requirements of Design-Build Documents at the time the Owner requests such substitution. The Design-Builder acknowledges that further payments to Design-Builder may not be made until the new sureties have been qualified and approved.

~~§ A.11.4.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.~~

~~§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

~~§ A.11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.~~

~~§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.~~

~~§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.; The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

~~§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.~~

PAGE 51

§ A.12.1.1 If a portion of the Work is covered contrary to the request of the Owner or any governmental authority, or to the requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner or a governmental authority has not specifically requested to examine prior to its being covered, the Owner or governmental authority may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

...

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.~~COMPLETION~~

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or any governmental authority or failing to conform to the requirements of the Design-Build Documents, Documents or the requirements of a governmental authority, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.1.2 Additionally, the Design-Builder shall be responsible for and the Owner may deduct from payments or sums due to the Design-Builder hereunder (or if no such payments or sums are due or are insufficient, then the Owner may charge the Design-Builder) (1) the reasonable value of the time of all Owner's personnel involved in the correction of such rejected Work, and (2) the reasonable value of the time of all Owner's personnel involved in reinspections of the corrected Work.

PAGE 52

§ A.12.2.2.1 In addition to the Design-Builder's obligations under ~~Section A.3.5, Article 3,~~ if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty

required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do ~~so unless the Owner has previously given the Design-Builder a written acceptance of such condition.~~ so. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty.~~ If the Design-Builder fails to correct non-conforming Work within a reasonable time during ~~that period~~ the one-year period for correction of the Work after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

...

§ A.12.2.2.3 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Design-Builder pursuant to this Section ~~A.12.2.A.12.2~~ A.12.2 for an additional one-year period commencing on the date the Owner accepts the corrected Work.

...

§ A.12.2.4 The Design-Builder shall bear all direct and incidental cost associated with correction of defective Work, including (1) the cost of such tests as Owner may require to verify that such repairs, corrections and replacements comply with the requirements of the Design-Build Documents, (2) all costs incidental to any required redesign, repair, correction, replacement and testing, including the removal, replacement and reinstallation of equipment necessary to gain access, and (3) the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

PAGE 53

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be ~~equitably adjusted by Change Order.~~ reduced by Change Order by the greater of (1) the reasonable cost of removing, correcting and/or completing the defective, nonconforming and/or incomplete Work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. Such adjustment shall be effected whether or not final payment has been made.

...

§ A.13.1.1 ~~The Design-Build Contract shall be governed by the law of the place where the Project is located.~~ internal laws of the State of Minnesota shall govern the validity, construction and enforceability of this Design-Build Contract, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity,

performance and enforcement of this Design-Build Contract shall be in the courts of record of the State of Minnesota and venue shall be in Hennepin County.

...

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

~~§ A.13.2.2~~ The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3.1 ~~Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if~~ All notices shall be sent to the Project Manager and designated representative of the party receiving notice, at the address, email address, or facsimile number provided by that party. Notices personally delivered or sent by electronic mail or facsimile before 4:00 p.m. CST on a Business Day shall be deemed delivered on such date; if personally delivered or transmitted by e-mail or facsimile after 4:00 p.m. CST, delivery shall be deemed effected as of the next Business Day, provided any delivery by e-mail or facsimile must be confirmed by a hard copy mailed on the date of transmittal. Notices sent by registered or certified mail to the last business address known to the party giving notice shall be deemed to be given on the second Business Day from the date the same are deposited in said mail. Notices given in any other manner shall be deemed given on the date actually received.

PAGE 54

§ A.13.4.1 ~~Duties~~ Except to the extent expressly provided in this Design-Build Contract, duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. No election of any individual remedy by the Owner shall be

deemed to be a waiver of additional remedies available under this Design-Build Contract or imposed or available at law.

§ A.13.4.3 If the Owner has the right to collect any amount from the Design-Builder under this Design-Build Contract, including the right to an adjustment of the Contract Sum, that right shall include the right to deduct any amount due from payments due the Design-Builder under this Design-Build Contract and, if payments due the Design-Builder under this Design-Build Contract are not sufficient to cover such amounts, the Owner may set off the amount due against any account or agreement with the Design-Builder and may bring legal action to collect the amount due.

...

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by ~~laws, ordinances, rules,~~ applicable laws, statutes, ordinances, codes, rules and regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. ~~Unless otherwise provided, the~~The Design-Builder shall make prompt arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, which arrangements shall include coordination, scheduling and safe access, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and, if applicable, the appropriate public authority, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

PAGE 55

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to this Design-Build Contract within the time period specified by applicable law.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate this Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a

Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction through no fault of the Design-Builder that requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped; or
- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

- .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

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

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3** the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4** the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less. ~~Intentionally Deleted~~

§ A.14.1.3 If one of the reasons described in ~~Sections A.14.1.1 or A.14.1.2~~ Section A.14.1.1 exists, the Design-Builder may, upon ~~seven~~ 14 days' written notice to the Owner, ~~terminate the~~ (given after the Work has stopped for 30 consecutive days) ~~terminate this~~ Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable ~~overhead, profit~~ overhead and profit for completed Work (but not on overhead or anticipated profits for Work not yet executed) and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon ~~seven additional~~ 14 days' written notice to the Owner, ~~terminate the~~ (given after the Work has been stopped for 60 consecutive days) ~~terminate this~~ Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

PAGE 56

§ A.14.2.1 The Owner may terminate ~~the~~ this Design-Build Contract if the Design-Builder:

- ~~.1~~ .1 ~~persistently or repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- ...
- ~~.3~~ .3 ~~persistently disregards laws, ordinances or rules, regulations or~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority having jurisdiction;
- ~~.4~~ .4 ~~files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of commencement of same, makes an assignment for the benefit of its creditors, has a receiver appointed to manage the Design-Builder's assets or otherwise is or becomes insolvent;~~
- ~~.5~~ .5 ~~fails to maintain schedules as required by the Design-Build Documents;~~
- ~~.6~~ .6 ~~fails to perform the Work in accordance with the Design-Build Documents; or~~
- ~~.4~~ .7 ~~otherwise is guilty of substantial breach of a provision of the Design-Build Documents.~~

§ A.14.2.3 When the Owner terminates ~~the~~ this Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to

the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall ~~pay the difference to the Owner.~~ promptly pay the difference to the Owner, and include the right of set off by the Owner against any account or agreement with the Design-Builder.

§ 14.2.5 If, after notice of termination for cause, it is determined that none of the conditions set forth in Section A.14.2.1 have occurred, the termination shall be deemed to have been effected for the convenience of the Owner and the Design-Builder shall be paid in accordance with Section A.14.4.3.

PAGE 57

.2 that an equitable adjustment is made or denied under another provision of ~~the~~this Design-Build Contract.

...

§ A.14.4.1 The Owner may, at any time, terminate ~~the~~this Design-Build Contract for the Owner's convenience and without cause.

...

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services ~~not~~ completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder 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 executed. The Design-Builder shall not be entitled to anticipated profits or overhead for Work not executed.

ARTICLE A.15 GMP PROPOSAL

§ A.15.1 The Design-Builder shall prepare a GMP Proposal for review and approval by the Owner, which GMP Proposal shall describe the construction Work to be performed by the Design-Builder and establish a Guaranteed Maximum Price and a schedule for completion of the Work, as follows (all references to the Design-Build Documents mean the Design-Build Documents as modified as of the referenced date):

§ A.15.1.1 The Design-Builder shall consult with the Owner to reconcile any actual or apparent errors, inconsistencies or omissions among the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, and between those items and the field measurements and observations of the Design-Builder pursuant to Section A.3.2.4.

§ A.15.1.2 After such consultation and reconciliation with the Owner, the Design-Builder shall provide the Owner with an evaluation of the Design-Build Documents, GMP Budget and schedule for completion of the Work, including recommendations for adjustments, if any.

necessary to account for the reconciliation of errors, inconsistencies or omissions.

§ A.15.1.3 The Design-Builder and Owner shall incorporate adjustments to the Design-Build Documents, GMP Budget and schedule for completion of the Work approved by the Owner, if any, in a Modification to the Design-Build Documents.

§ A.15.1.4 The Design-Builder shall review with the Owner the value of alternative materials, building systems and equipment, together with other considerations based on the Design-Build Documents and aesthetics in developing the design and construction of the Project.

§ A.15.1.5 The Design-Builder shall develop a GMP Proposal, in consultation with the Owner, based on the Design-Build Documents and the Owner's preferred alternative approach to the design and construction of the Project. The Design-Builder shall review drafts of the GMP Proposal from time to time to confirm that the Design-Builder is proceeding in accordance with the Owner's expectations.

§ A.15.1.6 The GMP Proposal shall provide information to establish the design, cost and schedule for the Project in a form acceptable to the Owner, in sufficient detail to allow the Owner to approve the design and the Design-Builder to commit to a Guaranteed Maximum Price and proceed with the construction documents for and construction of the Project, including at least the following:

- .1 Statement of proposed Guaranteed Maximum Price, consistent with the GMP Budget, itemized in a Schedule of Values by Construction Specification Institute ("CSI") section, and fees, establishing the maximum amount the Owner shall be required to pay the Design-Builder for the Cost of the Work plus the Design-Builder's Fee (which shall include all compensation and expenses payable to the Design-Builder under this Design-Build Contract); identifying Work the Design-Builder proposes to perform with its own personnel and Work the Design-Builder proposes to perform with Contractors hired by the Design-Builder; and including any proposed unit prices, allowances, and assumptions.
- .2 A critical path Project schedule, including schedule for decisions or other actions by the Owner, providing for Substantial Completion to occur no later than the date provided in Design-Build Documents.
- .3 A narrative description of the scope of the work and design intent, in sufficient detail to establish the arrangement of the different types and sizes of space, building masses and general building materials.
- .4 A schedule of the design documents upon which the Guaranteed Maximum Price is based, which design documents shall include at least the documents listed in Section A.15.1.7.
- .5 A description of the energy conservation measures and techniques incorporated into the Project.
- .6 A schedule of proposed variances to the University's Standards and Procedures for Construction, if any, including a statement of the benefits of or justifications for

the proposed variances and the impact of the proposed variances on the cost, schedule or quality of the Project.

- .7 A statement indicating which portions of the Project are to be commissioned and a description of the commissioning process for each, if any.
- .8 A Project directory including all contractors and subcontractors.

§ A.15.1.7 The design documents for the GMP Proposal shall be at a design development level, be consistent with the Design-Build Documents and consist of at least the following:

- .1 Preliminary design drawings, consisting of exterior and interior perspective sketches or elevations, and other drawings or graphics necessary to describe the character of the Project, including any features likely to have a significant impact on cost, use or appearance of the project;
- .2 Site plans, illustrating building location relative to the campus and abutting rights-of-way, landscape architecture, site drainage, site utilities, plazas, parking lots and other exterior improvements, if any;
- .3 Floor plans (including layout of the built-in furniture, fixtures and equipment);
- .4 Drawings delineating the structural, mechanical and electrical systems including utility layouts and connections;
- .5 Drawings of the major building sections;
- .6 Drawings of building details;
- .7 Written outline specifications; and
- .8 Other documents required to fix and describe the size, quality and character of the Project, its architectural, structural, mechanical and electrical systems and the materials and such other elements of the Project as may be appropriate.

§ A.15.1.8 By submitting a GMP Proposal to the Owner, the Design-Builder represents that (1) the Design-Builder has reviewed the Design-Build Documents and other information provided by the Owner, obtained such additional information from the Owner, direct observation of the site and other sources that the Design-Builder deemed necessary and sufficient to prepare the GMP Proposal, (2) the GMP Proposal is consistent with the Project Criteria provided by the Owner, as modified with the consent of the Owner, and (3) the Design-Build Documents provide sufficient information to complete the Work for the Contract Sum (up to the Guaranteed Maximum Price) and within the Contract Time.

§ A.15.1.9 The Owner shall review the GMP Proposal and accept, reject or request modification of the GMP Proposal by written notice to the Design-Builder. If the Owner requests modification of the GMP Proposal, the Owner and the Design-Builder shall cooperate with each other to arrive at and agree upon such modification as expeditiously as possible; provided, however, that the Owner may at anytime elect to reject the GMP Proposal, as presented or later modified, and terminate this Design-Build Contract for convenience pursuant to Section A.14.4.

§ A.15.1.10 The Design-Builder shall prepare design documents and assist the Owner in preparing additional documentation of the GMP Proposal for presentation to the Owner's Board

of Regents, consisting of the following:

§ A.15.1.10.1 The Design-Builder shall assist the Owner in assembling all of the following, which assistance shall include providing the information required for items .4, .6, .7, .10, .11 and .12 below:

- .1 Basis for Request;
- .2 Change in Project Since Approval;
- .3 Gender Equity Impact Statement;
- .4 Scope of Project;
- .5 Environmental Issues;
- .6 Design Guidelines Response;
- .7 Cost Estimate;
- .8 Capital Funding;
- .9 Capital Budget Approvals;
- .10 Annual Operating and Maintenance Cost and Source of Revenue;
- .11 Time Schedule;
- .12 Name of Design-Builder and Architect; and
- .13 Recommendation.

§ A.15.1.10.2 Owner's Power Point Presentation typically includes, but is not limited to, the following slides:

- .1 Site map locating the Project on Campus (or other location),
- .2 Site plan illustrating the Project on the site,
- .3 Project rational,
- .4 Project description,
- .5 Design guidelines response, and
- .6 Project illustrations which typically include perspective drawings (exterior and interior), elevation drawings, and floor plans.

ARTICLE A.16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

§ A.16.1 The Design-Builder shall not discriminate against Contractors, Subcontractors, or employees, or applicants for employment, contracting or subcontracting, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, veteran status, disability, sexual orientation, age, or membership in any other protected class under state, federal, or local law (the "Protected Classes"). The Design-Builder shall ensure that Contractors and Subcontractors do not discriminate against employees, Subcontractors or applicants for employment or Subcontracting because of membership in any Protected Class.

§ A.16.2 The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be furnished by the Owner setting forth the nondiscrimination provisions of Section A.16.1.

§ A.16.3 For contracts and subcontracts exceeding \$100,000, the Design–Builder shall designate an Equal Employment Opportunity Officer, who shall have authority and responsibility for the implementation of equal employment opportunity and affirmative action programs under this Design–Build Contract. The Design–Builder shall promptly submit to the Owner for approval a written copy of its program or certificate of compliance from the State of Minnesota within 14 days after execution of the Design–Build Contract.

§ A.16.4 In all solicitations or advertisements for employees, Contractors and Subcontractors placed by or on behalf of the Design–Builder, the Design–Builder shall state that all qualified applicants will receive consideration for employment without regard to membership in a Protected Class.

§ A.16.5 Before commencing the construction Work, the Design–Builder shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contracts or understandings, notices of its commitment to nondiscrimination and affirmative action to be posted in conspicuous places available to employees and applicants for employment.

§ A.16.6 The Design–Builder may be required to give evidence, upon the Owner’s request, of persistent and prolonged efforts to increase the number of employees in Protected Classes. The Design–Builder shall make maximum use of apprentices to develop qualified minority and female personnel. The Design–Builder shall seek to fill labor shortages for apprentices and skilled journeymen by upgrading present employees including qualified minority and female employees.

§ A.16.7 The Design–Builder shall promptly furnish to the Owner, if requested, information and periodic reports in a format to be reasonably agreed upon, to substantiate its compliance with the requirements of the policy set forth in this Article A.16. The Design–Builder shall permit access to its books, records and accounts by the Owner for the purpose of ascertaining compliance with these provisions.

§ A.16.8 Noncompliance with any equal employment provision of this Design–Build Contract shall be a material default under the Design–Build Contract, which the Design–Builder shall cure within 14 calendar days of notice of default from the Owner. In addition to other remedies available, failure to cure shall entitle the Owner to liquidated damages in an amount equal to 5% of the Guaranteed Maximum Price. The Owner and the Design–Builder acknowledge and agree that the actual extent of losses the Owner will incur as a result of the failure of the Design–Builder to comply with the provisions of the Design–Build Contract cannot reasonably be determined as of the date of this Design–Build Contract, and the liquidated damages amount is reasonable under the circumstances and not a penalty.

§ A.16.9 The Design-Builder shall include the provisions of Sections A.16.1 through A.16.8 in all subcontracts to the second tier, unless exempted by the provisions of the policy set forth in this Article A.16. The Design-Builder shall take action necessary to enforce these provisions.

§ A.16.10 Contracts and subcontracts not exceeding \$2,500 are exempt from the reporting requirements of this Article, but not from compliance.

ARTICLE A.17 MINIMUM WAGE RATES

§ A.17.1 In accordance with Owner's policy, the Design-Builder, Contractors, and Subcontractors at any tier, agents, and other persons doing or contracting to do all or a part of the Work (hereinafter "Firms") shall pay laborers, workers and mechanics performing Work directly at the site at least the Prevailing Wage Rate applicable to their respective class of labor in the county in which the Project is located.

§ A.17.2 Firms shall pay laborers, workers and mechanics performing Work directly on a Project work site at least one and one-half times the hourly basic rate of pay for all hours worked in excess of the Prevailing Hours of Labor applicable to their respective class of labor in the county in which the Project is located. The Design-Builder is responsible for compliance by all Firms.

§ A.17.3 The term "Project," for purposes of this Article, means erection, construction, remodeling, alteration, or repairing of a building or other facility pursuant to a contract with the Owner including but not limited to, contracts financed in whole or part by the State of Minnesota and provided the contract sum is at least \$2,500 if only one trade or occupation is required to complete the Work, or the contract sum is at least \$25,000 if more than one trade or occupation is required to complete the Work.

§ A.17.4 The term "Prevailing Wage Rate" means the hourly basic rate of pay determined by the Minnesota Department of Labor and Industry ("Department") published annually as the Department's Wage Rate Determination Schedules plus contributions for health and welfare benefits, vacation benefits, pension benefits, and any other economic benefits paid to the largest number of workers engaged in the same class of labor in the county in which the Project is located.

§ A.17.5 The term "Prevailing Hours of Labor" refers to the number of hours of labor per day and per week worked within the county where the Project is located as determined by the Department. Holiday hours, vacation time, and sick leave are not counted in figuring overtime hours. The Design-Builder shall post and maintain a copy of the current Prevailing Wage Rate Schedules and Prevailing Hours of Labor for all classes of labor at the site in a conspicuous place accessible to all employees.

§ A.17.6 At the Owner's request, Firms shall furnish to Owner copies of certified payroll records for all laborers, workers, and mechanics performing the Work at the site. The records shall be

submitted to the Owner within seven business days of the date of the request. If the request covers future pay periods, or is ongoing in nature, the records shall be submitted to the Owner within seven business days of the last day of each pay period covered by the request. Whenever possible, the records should be submitted in electronic format, as a .pdf file.

§ A.17.7 The term "Certified Payroll" refers to payroll records properly completed and submitted on U.S. Department of Labor form WH-347. A copy of the form can be found in Appendix W to the Construction Standards, and on the U.S. Department of Labor's website at <http://www.dol.gov/esa/forms/whd/wh347.pdf>.

§ A.17.8 If the Owner becomes aware that Firms are not paying Prevailing Wage Rates or time and one-half rates for hours exceeding Prevailing Hours of Labor, it will consider such non-compliance a material breach of this Design-Build Contract. The Design-Builder may cure the breach by immediately commencing payment or causing immediate commencement of payment at Prevailing Wage Rates and/or commencing payment or causing commencement of payment for hours worked in excess of Prevailing Hours of Work at one and one-half the basic rate, and promptly making restitution to laborers, workers, and mechanics who have been underpaid. In addition to other damages to which Owner may be entitled to on account of breach of contract, Design-Builder shall immediately pay Owner the total amount of the underpayment of wages plus 5%. The Owner and the Design-Builder acknowledge and agree that the actual extent of losses the Owner will incur as a result of a failure of the Contractor to comply with Article 17 cannot reasonably be determined as of the date of this Contract, and the liquidated damages amount is not a penalty, is reasonable under the circumstances and is specified so the Owner may reimburse the underpaid employees in connection with taking over and completing the Project.

§ A.17.9 The Design-Builder shall indemnify, defend (with counsel acceptable to the Owner) and hold the Owner harmless from all loss, cost or expense, including attorneys' fees arising out of Firms' failure to pay Prevailing Wage Rates or to pay one and one-half times the basic rate for hours worked in excess of Prevailing Hours of Labor. The Design-Builder's obligations under this Section shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

§ A.17.10 By requiring the Design-Builder to pay the wages under Sections A.17.1 and A.17.2 or to pay any other minimum wage rates, the Owner does not represent that labor may be employed at the minimum hourly wage. The Design-Builder shall investigate and verify the conditions at the location of the Work, to ascertain and insure the availability and cost of labor required to perform the Work.

§ A.17.11 A copy of the Wage Rate Determination schedules and the Prevailing Hours of Labor and Prevailing Wage Rates issued by the Department, applicable to the county in which the Project is located and the time period(s) when the Work will be performed, are included in the Project Manual and incorporated herein by this reference. The Design-Builder shall examine

each wage rate schedule for completeness and accuracy. If any trade which will be used for the Work is omitted, or any prevailing wage rate, prevailing hours of labor, or hourly basic rate shown is incorrect, such omission and/or discrepancy shall be promptly reported to the Owner. If the only applicable schedule is that of the Department, and any rate or prevailing hours of labor is missing or appears incorrect, the Design-Builder shall obtain the proper rate from the Department. If necessary, the Design-Builder shall assist in obtaining a decision or clarification on incorrect or missing rates.

§ A.17.12 If the Design-Builder, a Contractor or a Subcontractor at any tier fails to pay any of its laborers or mechanics the Prevailing Wage Rate as provided herein, such Design-Builder, Contractor or Subcontractor shall (a) immediately make payment of such prevailing wages to the laborers or mechanics that were underpaid; and (b) indemnify, defend (with counsel acceptable to the Owner) and hold the Owner harmless from any claims, demands or causes of action (including reasonable attorneys' fees and costs) arising from such failure. Additionally, if the Owner determines in its reasonable discretion and after reasonable notice to and communication with the Design-Builder, Contractor or Subcontractor that said Design-Builder's, Contractor's, or Subcontractor's failure to so pay prevailing wages results from the intentional misconduct or gross negligence of such Design-Builder, Contractor or Subcontractor, then the Design-Builder shall be liable to and pay to the Owner (or the Owner may withhold from payments owed to the Design-Builder), as liquidated damages, a sum equal to 5% of the unpaid wages. The Owner and the Design-Builder acknowledge and agree that the actual extent of losses the Owner will incur as a result of the failure of the Design-Builder to comply with the prevailing wage provisions of this Design-Build Contract cannot reasonably be determined as of the date of this Design-Build Contract, and the liquidated damages amount is reasonable under the circumstances, and not a penalty and shall be in addition to but not a limit on any rights and remedies otherwise available to the Owner. The Design-Builder's obligations under this Section shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

ARTICLE A.18 PROHIBITION AGAINST GRATUITIES

§ A.18.1 ACCEPTANCE OF ADVANTAGE

§ A.18.1.1 The Design-Builder acknowledges having read and understood Minnesota Statutes, Section 15.43, which is incorporated herein by reference as if fully set forth herein.

§ A.18.1.2 The Design-Builder 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 Design-Build Contract entitling the Owner to terminate for cause, pursuant to Section A.14.2.

§ A.18.1.3 By signing the Design-Builder's Proposal for this Project and by signing the Design-Build Documents, the Design-Builder certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially or materially from this Design-Build Contract.

ARTICLE A.19 VENDOR PERFORMANCE PROGRAM

§ A.19.1 The Owner has a Design and Construction Vendor Performance Program (the "VP Program") applicable to providers of design and construction-related services and materials. The Design-Builder agrees to exhaust all rights and remedies afforded the Design-Builder under the terms of the VP Program as a condition precedent to making any claim against the Owner arising out of or relating to the Owner's use or application of the VP Program. The Design-Builder acknowledges its receipt of a copy of the current VP Program which is available as "Document 00665" at www.cpm.umn.edu/bidding.html.

ARTICLE A.20 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT, AND SMALL BUSINESS PROGRAM

§ A.20.1 The Design-Builder acknowledges that the Owner has a policy to establish and implement Targeted Business, Urban Community Economic Development, and Small Business Program (the "TBE Programs"). A copy of this policy is available at <http://www1.umn.edu/regents/policies/administrative/TargetedBusiness.html>. The Design-Builder acknowledges that it has a copy of this policy. As a material consideration for the Owner entering into this Design-Build Contract, the Design-Builder agrees to satisfy this policy and to provide information regarding its actions intended to satisfy this policy that may be requested by the Owner. The Design-Builder agrees that it will fulfill the commitments with regard to the TBE Programs set forth on the Design-Builder's University Form 00658-A-RFP submitted with the Design-Builder's Proposal and, upon the Owner's request, provide substantiation of compliance.

ARTICLE A.21 USE OF NAME OR LOGO

§ A.21.1 Design-Builder agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the Owner or the name of any representative of the Owner in any sales promotion work or advertising, or any form of publicity, without the written permission of the Owner in each instance.

ARTICLE A.22 MINNESOTA GOVERNMENT DATA PRACTICES ACT AND CONFIDENTIAL INFORMATION

§ A.22.1 The Design-Builder shall comply with Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") with regard to any information the Owner provides to the Design-Builder that is subject to the Act. The Design-Builder shall keep confidential any information it receives from the Owner or any other source during the course of its performance that concerns the personal, financial or other affairs of the Owner, its Board of Regents, officers, employees or students. The Design-Builder shall return any documents or other information the Owner has supplied to the Design-Builder in connection with the goods supplied or services rendered under this Agreement, within 15 days after the completion of services, delivery of goods or upon request by the Owner, whichever occurs first.

§ A.22.2 The Design-Builder shall not use or disclose and shall not permit others to use or disclose Confidential Information without the Owner's prior written approval. The Design-

Builder may disclose the Confidential Information only to those employees that have a need to know the Confidential Information for the Project and only upon the following conditions: (1) the employees have each agreed in writing to the Design-Builder's obligations under this Section A.22, and (2) the Design-Builder has provided the original written agreement to the Owner.

§ A.22.3 The term "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Design-Builder and its agents, employees, contractors, subcontractors 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 the Design-Builder can show (by contemporaneous written records) that the Design-Builder had it in its possession before beginning the Project and before disclosure by the Owner.

§A.22.4 The Design-Builder agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section A.22. The Design-Builder agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section A.22.

§ A.22.5 The Design-Builder and its employees, agents, contractors, subcontractors 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.

§ A.22.6 The Design-Builder's obligations under this Section A.22 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

ARTICLE A.23 AUDIT

§ A.23.1 The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design-Build Contract; the accounting and control systems shall be satisfactory to the Owner.

§ A.23.2 The 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 Design-Builder'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, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating Work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records"). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and

indirect costs (including overhead allocations) as they may apply to costs associated with this Design-Build Contract. In those situations where Design-Builder's Records have been generated from computerized data, the Design-Builder agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

§ A.23.3 The Design-Builder shall preserve the Records for a period of 12 years after final payment or for such longer period as required by law, provided, however, that if a Claim is asserted during said 12-year period, the Design-Builder shall retain all such Records until the Claim has been resolved.

§ A.23.4 The Design-Builder shall require all payees (including those entering into lump sum subcontracts and lump sum major material purchase orders) to comply with the provisions of this article by insertion of the requirements hereof in a written agreement between the Design-Builder and the payee.

§ A.23.5 The Owner and its accountants, auditors and agents shall be provided adequate and appropriate work space in order to conduct audits in compliance with this article, and the Owner and its accountants, auditors and agents agree to perform all of their work in that space and not elsewhere in the Design-Builder's offices, to not interact with the Design-Builder's employees, and to not otherwise unreasonably interfere or disrupt the work of the Design-Builder's employees.

§ A.23.6 If an Audit discloses overpricing or overcharges (of any nature) by the Design-Builder 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 Design-Builder. 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 Design-Builder.

ARTICLE A.24 NO-STRIKE PROVISION

§ A.24.1 If the Design-Builder provides unionized labor, then the Design-Builder shall have in effect throughout the performance of the Agreement, collective bargaining agreements that prohibit strikes, lock-outs, slow downs, work stoppages, and other actions that may delay and/or interfere with the timely completion of the Work. The Design-Builder shall require all Contractors and Subcontractors at any tier to include the same requirements in any collective bargaining agreements to which they are a party. The Design-Builder shall be liable for all direct and consequential damages attributable to any delay caused by the failure of the Design-Builder to include, or require its Subcontractors to include, such requirements in such collective bargaining agreements.