



AIA[®]

Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

University of Minnesota Project Name:

University of Minnesota Project No.:

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THE OWNER:

(Name and address)

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

Through its Project Manager

Name
Capital Project Management
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, MN 55455
Phone: (612) 62
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THE ARCHITECT:

(Name and address)

Company
Address
City/State

Contact

Name
Phone:
Fax:
E-mail:

ADDITIONS AND DELETIONS:

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the "Agreement") and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions, if any), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The term "Addenda" (or singular "Addendum") means any written revisions or clarifications of the Contract Documents that the Architect issued and incorporated into the Contract Documents before the parties executed the Contract.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract. The term "Contract" means the entire and integrated agreement between the Owner and the Contractor. The Contract supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of the obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2, certify termination of the Agreement under Section 14.2.2 and certify payment to the Contractor upon termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.4 In the case of any inconsistency between, among or within any Contract Document not clarified by an Addendum, the Contractor shall perform the Work in accordance with the Architect's interpretations. For purposes of determining whether the Contractor has performed the Work in accordance with the Contract Documents or whether the Owner or the Contractor is entitled to an adjustment in the Contract Sum as a result of any inconsistency in the Contract Documents, the parties shall deem the Contract to have required the Contractor to provide the higher quality, greater quantity, more restrictive and/or more expensive alternative.

§ 1.2.5 Where a Contract 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 Contract Document shall apply to this Project.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5

OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Owner shall be the owner of the Instruments of Service, including the Drawings and Specifications, and shall have all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

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§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, which the Owner may withhold in its sole discretion.

(Paragraphs deleted)

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner may act with regard to the Contract through its Board of Regents, the President, the Vice President for University Services and his or 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 matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph deleted)

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall furnish surveys described in Section 2.2.3 and other information prepared by third parties for the Project to the extent the Owner deems necessary for the performance of the Contractor's services. The Owner makes no representations or warranties as to the accuracy of the information it obtains from third parties and provides to the Contractor pursuant to this Section 2.2. In addition, the Owner may provide the Contractor 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 Contractor from the Owner's records.

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

§ 2.2.3 Subject to Section 2.2.1, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project to the extent utility locations can be determined by review of readily available records, observation of surface conditions, or other standard surveying practices.

§ 2.2.4 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents (other than documents incorporated by reference) for purposes of making reproductions pursuant to Section 1.5.2.

(Paragraph deleted)

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the

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Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails 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 Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to carry out the Work pursuant to this Section 2.4 shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.5 OWNER'S RIGHT TO INSPECT AND REJECT THE WORK

The Owner shall have the right to reject Work that does not conform to the Contract Documents and to require inspection and testing of the Work to the same extent as the Architect's authority under Section 4.2.6. Neither this right, nor the exercise or failure to exercise this right, shall give rise to any duty or responsibility on the part of the Owner to the Contractor, the Architect, or any other person or entity.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.1.4 Execution of the Contract by the Contractor is a representation by the Contractor that (1) the Contractor is 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 Contract Documents in an efficient and capable manner, (2) the Contractor is authorized to do business as a contractor in the jurisdiction where the Project is located, and (3) the person(s) executing the Agreement on behalf of the Contractor are properly authorized to do so.

§ 3.1.5 The Contractor shall exercise the skill and care of a sophisticated contractor with experience in projects similar to the Project.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, reviewed information provided by the Owner and obtained by the Contractor from the other sources, and correlated such information and personal observations with requirements of the Contract Documents, and knows of no reason why the Contractor cannot perform the Work for the Contract Sum and within the Contract Time.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2, and information obtained by the Contractor from any source, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any apparent errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor 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 Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner and the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Contractor shall not be responsible for any loss or

damage arising solely from those Owner and/or Architect-required means, methods, techniques, sequences or procedures.

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

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

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

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive only with the written consent of the Owner, which the Owner may withhold in its sole discretion.

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

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

§ 3.4.5 The Contractor agrees that it is an independent contractor 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 any payroll taxes or contributions. The Contractor agrees to indemnify, defend (with counsel reasonably 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 Contractor's employees, including but not limited to attorneys' fees. The Contractor's obligations under this Section 3.4.5 shall survive the Owner's acceptance of the Work or termination of the Contract.

§ 3.4.6 The Contractor 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 federal, state and local laws, ordinances and regulations as they affect performance of this Contract, 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.

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

§ 3.5 WARRANTY

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

§ 3.5.2 The term "defective Work" means Work that does not conform to the requirements of the Contract Documents, including, without limitation, incomplete Work.

§ 3.5.3 During the first year following the date of Substantial Completion of the Work, the Owner's remedies for breach of contract shall include, but not be limited to, correction of the Work pursuant to Section 12.2.

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

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES, COMPLIANCE WITH LAWS AND CONCEALED OR UNKNOWN CONDITIONS

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

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

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

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

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT AND PROJECT MANAGER

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

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to the superintendent or project manager shall be as binding as if given directly to the Contractor.

§ 3.9.2 The Agreement identifies the project manager and superintendent the Contractor will employ for the Project.

§ 3.9.3 The Contractor shall not change the project manager or superintendent without the Owner's written consent, which the Owner may withhold in its sole discretion.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed the current time limits under the Contract Documents, 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 Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's review. The submittal schedule will identify submittals and samples in sufficient detail for the Architect to evaluate whether the submittal schedule is properly inclusive and properly sequenced. The Architect and Owner will promptly review the submittal schedule and raise appropriate concerns. The Contractor, Owner and Architect will work together to agree to a submittal schedule that serves the needs of the Work. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 The Contractor shall maintain all approved permit drawings in a manner that is accessible to the Architect, the Owner, and government inspectors. The Contractor shall mark and deliver all approved permit drawings to the Owner before final payment.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such 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 professional, if

prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10 and Section 4.2.7, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor 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, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall keep areas outside the construction limits free from all construction debris, building materials and equipment likely to cause hazardous conditions. The Contractor acknowledges that the site may be within an active university campus and agrees to restrict access by students, faculty, and others to the area within the construction limits and minimize construction traffic and other interference with activities in areas outside the construction limits. The Contractor 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 Contractor 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.

§ 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor 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 Contractor shall not cut or otherwise alter such existing construction or 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 Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and the Architect with safe and proper access to the Work in preparation and progress wherever located. The Contractor shall provide safe and proper facilities for such access by the Owner and the Architect and for testing and inspections and shall secure and protect samples and testing equipment.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights (with counsel reasonably acceptable to the Owner) and shall hold the Owner and Architect 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 by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect. The Contractor's obligations under this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel reasonably acceptable to the Owner) and hold harmless the Owner, Architect, Architect'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, relating to, or resulting from (a) the breach or alleged breach of the Contract Documents by the Contractor; and/or (b) the negligent act or omission of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel reasonably acceptable to the Owner) and hold harmless the Owner against any assertion of claims, including without limitation any assertion of security interests, by Subcontractors, Sub-subcontractors or material suppliers for payment for Work or materials for which Owner has paid the Contractor.

§ 3.18.1.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel reasonably 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 Contractor's performance of the Work. As used in the Contract Documents, "labor-related activity" includes, but is not limited to, strikes, walk outs, informational or organizational picketing, use of placards, distribution of hand outs, leaflets or other similar acts at or in the vicinity of the Project or in the vicinity of any other facility where the Owner conducts business. The Owner shall advise the Contractor if any labor-related activity occurs and the Contractor shall arrange for the legal representation necessary to protect the Owner's interest, with counsel reasonably acceptable to the Owner.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1, Section 3.18.1.1, and Section 3.18.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The Contractor's obligations under Section 3.18 shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 3.19 PROGRESS REPORTS AND MEETINGS

§ 3.19.1 PROGRESS REPORTS The Contractor 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 Contractor shall cooperate with the Owner to prepare such additional reports as required by the Owner.

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

§ 3.20 PROJECT MANAGEMENT INFORMATION SYSTEM

§ 3.20.1 The Owner may, at its sole option, direct the Contractor to use the Owner's internet-based Project Management Information System. The functionality of this software includes, 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.

§ 3.20.2 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 Contractor's designated Project representative(s) at no cost to the Contractor. Except for licenses and initial training, the Owner assumes no responsibility for any costs associated with the use of this software by the Contractor.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall notify the Contractor in writing designating the individual or entity to whom the Owner has assigned the Architect's remaining construction administration responsibilities.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and the Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. Notwithstanding the foregoing, the Owner and the Contractor may communicate with each other directly if they provide the Architect with copies of written communications and written confirmation of any oral communications affecting the Work or the Architect's duties.

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

§ 4.2.6 The Architect shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall promptly report to the Contractor and the Owner any errors, omissions, inconsistencies or nonconformance of the Contractor's submittals. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of

which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 The Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The Architect will keep the Owner and the Contractor apprised of the identities of its representatives and the duties, responsibilities and limitations of authority of each representative.

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

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

§ 4.2.13 Intentionally Deleted

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2

AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed as Subcontractors for each portion of the Work (including all persons or entities from which the Contractor proposes to solicit competitive bids or proposals, if required). For each named person or entity, the Contractor shall include the name, address of principal places of business, and the portion of the Work to be performed. The Architect, after consultation with the Owner, may reply within 14 days to the Contractor in writing stating (1) whether the Owner objects to any such proposed person or entity, or (2) that the Architect requires additional time for review.

If a Compliance Certificate (University Document 00900) and supplemental verification (University Document 00901) verifying compliance with Minn. Stat. § 16C.285, Subd. 3 (Responsible Contractor, Minimum Criteria) was required of Contractor in the solicitation response and prior to execution of the Contract, respectively, Contractor's list of first-tier subcontractors submitted as part of University Document 00901 shall be included in the writing required above. Within 14 days of retaining additional Subcontractors, Contractor shall submit a supplemental list of first-tier Subcontractors (excluding material suppliers, as defined in Minn. Stat. § 16C.285, Subd. 1(c)) on University Document 00902 naming all such additional Subcontractors. Prior to retaining the additional Subcontractors, Contractor shall provide the Architect and Owner the opportunity to review and object to the proposed additional Subcontractors as described above. Upon request from the Owner, the Contractor shall submit copies of the signed Compliance Certificates from all subcontractors of any tier and all motor carriers, as defined in Minn. Stat. § 16C.285, Subd. 1(e).

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 The Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract

Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Notwithstanding any provision of Subsection 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor at any tier shall be pursuant to a written subcontract agreement between the Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier), which shall be prepared on a form of subcontract agreement satisfactory to the Owner. Each such subcontract shall require that such Work be performed in accordance with the Contract Documents.

If a Compliance Certificate (University Document 00900) and supplemental verification (University Document 00901) verifying compliance with Minn. Stat. § 16C.285, Subd. 3 (Responsible Contractor, Minimum Criteria) was required of Contractor in the solicitation response and prior to execution of the Contract, respectively, each such subcontract shall require the subcontractor at any tier (excluding material suppliers, as defined in Minn. Stat. § 16C.285, Subd. 1(c)) to submit a Compliance Certificate on University Document 00900 that includes a list of all subcontractors (excluding material suppliers) it intends to retain for Work on the Project. Further, each such subcontract shall also require any subcontractor at any tier (excluding material suppliers) to obtain a Compliance Certificate on University Document 00900 from each additional subcontractor it retains, and, within 14 days of retaining the additional subcontractors, to submit a supplemental list on University Document 00902 that names the additional subcontractors. Each said subcontract shall also require any subcontractor at any tier to submit copies of signed Compliance Certificates from all subcontractors of any tier and all motor carriers (as defined in Minn. Stat. § 16C.285, Subd. 1(e)) upon request.

§ 5.3.3 On request of the Owner, the Contractor shall submit to the Owner copies of all executed subcontracts, material and equipment supply contracts, and Purchaser Orders, including subsequent modifications, within seven calendar days of the date of the execution. Subcontractor's Certificates of Insurance and Performance and Payment Bonds, as required by the Contract Documents, shall be provided in the same manner.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations, provided the Contractor shall not be released from its obligations under the subcontract or to the Owner under this Contract.

§ 5.4.2 Intentionally Deleted

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity or individual.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The 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 Contractor shall cooperate with the Owner and separate contractors whose work might interfere with the Contractor's Work. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor 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 Contractor, separate contractors and the Owner until subsequently revised.

(Paragraph deleted)

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor 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 Contractor's Work, except as to defects not then reasonably discoverable.

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

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5. If such separate contractor initiates legal or other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, and the Contractor shall defend such proceedings at its own expense, with counsel reasonably acceptable to the Owner, and if any judgment or award against the Owner arises therefrom, the Contractor 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 Contractor. The Contractor's obligations under this Section shall survive the Owner's acceptance of the Work or termination of this Contact.

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS; CONSTRUCTIVE CHANGE DIRECTIVES

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

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES AND CHANGE ORDER PRICING

§ 7.3.1 Intentionally Deleted.

§ 7.3.2 Intentionally Deleted.

(Paragraphs deleted)

§ 7.3.3 If a Change Order or a Construction Change Directive provides for an adjustment to the Contract Sum, and the Contract Documents do not provide unit prices or another specific basis for adjustment, then the adjustment shall be based on one of the following methods, as determined by the Owner in its sole discretion (subject to the Contractor's right to assert a Claim in accordance with Article 15):

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation pursuant to Section 7.3.7; or
- .2 Cost of the Work to be determined in accordance with the Agreement, plus a mark-up for overhead and profit determined in accordance with Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, such unit prices shall provide the basis for adjustment of the Contract Sum, provided 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 Contractor, the applicable unit prices shall be equitably adjusted.

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

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement 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.

(Paragraphs deleted)

§ 7.3.7 CHANGE ORDER PROPOSAL AND CHANGE ORDER PRICING

Upon request by the Owner, or initiation of a Change Order by the Contractor pursuant to Section 7.5 or 7.6, the Contractor shall submit a Change Order Proposal identifying proposed changes in Contract Time and Contract Sum. If the Contractor proposes an adjustment in Contract Time, the Contractor shall submit an updated project schedule and submittal schedule. If the Contractor proposes an adjustments to the Contract Sum, and the Contract Documents do not provide unit prices or another specific basis for adjustment, the Change Order Proposal shall propose either a lump sum adjustment in the Contract Sum based on the Contractor's estimated increase or decrease in the Cost of the Work attributable to the Change, or propose an adjustment in the Contract Sum based on the Contractor's cost plus the mark-up described in Contractor's Proposal as modified by Owner ("Change Order Mark-up"), subject to the following:

- .1 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.
- .2 Notwithstanding anything to the contrary in the definition of Cost of the Work in the Agreement, the Contractor shall not apply the Change Order Mark-up to sales and use tax, if any.
- .3 Maximum Mark-up Percentage Allowable on Self-Performed Work: With respect to pricing Change Orders, the maximum mark-up percentage fee to be paid to Contractor or any Subcontractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed eight percent (8 %) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the Change Order or extra Work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.
- .4 Maximum Mark-up Percentages Allowable on Work Performed by Subcontractors: With respect to pricing the portion of Change Order proposals involving Work

performed by Subcontractors, the maximum markup percentage fee allowable to the Contractor or Subcontractor supervising the lower tier contractor's work shall not exceed five percent (5 %) of the net sum of all approved change Order Work performed by all Subcontractors combined for any particular Change Order proposal.

- .5 No Mark-up on Bonds and Liability Insurance Costs: Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any markup percentage Fee. [See 7.3.7.9 below]
- .6 Direct and Indirect Costs Covered by Mark-up Percentages: As a further clarification, the agreed upon maximum markup percentages allowable are intended to cover the Contractor's profit and all indirect costs associated with the Change Order Work. Items intended to be covered by the maximum markup percentages allowable include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; officers; project management; safety director, superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; auto and pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the maximum markup percentages allowable. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$1,000.00.
- .7 Deduct Change Order and Net Deduct Changes: The application of the mark-up percentage referenced in the preceding paragraphs will apply to both additive and deductive Change Orders. In the case of a deductive Change Order, the credit will be computed by applying the percentages as outlined in above so that a deductive Change Order would be computed in the same manner as an additive Change Order. In those instances where a change involves both additive and deductive Work, the additions and deductions will be netted and the mark-up percentage adjustments will be applied to the net amount.
- .8 Contingency: In no event will any lump sum or percentage amount for "contingency" be allowed to be added as a separate line item in Change Order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the Work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
- .9 General Liability Insurance and Bonds: In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds in relation to the base contract price, a final Change Order will be processed to account for the Contractor's actual net increase or decrease in comprehensive general liability insurance costs and/or bond premium cost associated with Change Orders.
- .10 Accurate Change Order Pricing Information: Contractor (on behalf of itself and all of its Subcontractors of any tier) agrees that it is responsible for submitting accurate cost and pricing data to support its lump sum Change Order and/or cost plus Change Order Proposals or other price adjustments under the Contract. Contractor further agrees to submit Change Order Proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of Change Orders. Contractor agrees that any

"buy-out savings" on Change Orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a subcontractor or a material supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or Supplier for the approved Change Order Work.

- .11 Right to Verify Change Order Pricing Information: Contractor (on behalf of itself and all of its Subcontractors of any tier) agrees that any designated Owner's representative/auditor will have the right to examine (copy or scan) the records of the Contractor, Subcontractor or Sub-subcontractor's records (during the Contract period and up to 12 years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order Proposal and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract price adjustment will be made. Such post-approval Contract price adjustments will apply to all levels of Contractors and/or Subcontractors and to all types of Change Order Proposals specifically including lump sum Change Orders, unit price Change Orders, and cost-plus Change Orders.
- .12 Requirements for Detailed Change Order Pricing Information: Contractor, agrees to provide and require all Subcontractors and Suppliers of any tier to provide a breakdown of allowable labor and labor burden cost information. This information will be used to evaluate the potential costs of labor and labor burden related to Change Order Work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor cost components used to price Change Orders will be subject to later review by the Owner. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.
- .13 For Construction Manager at Risk Change Order work only: Contractor 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 Contractor's Fee, if any) until the cumulative value of accepted Change Orders exceeds 5% of the original Contract Sum. In addition, Contractor shall not be allowed to separately charge, as a Cost of the Work or otherwise) any costs identified in Section 7.3.7.6 above, as such costs are deemed to be covered by Contractor's Fee.

§ 7.3.8 Intentionally Deleted

§ 7.3.9 Intentionally Deleted

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order or authorize 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 Contract Documents. Such changes will be effected by written order signed by the

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Architect and shall be binding on the Owner and the Contractor, subject to the right of the Owner and the Contractor to assert a Claim for adjustment in Contract Sum or Contract Time if either disagrees with the determination of the Architect. The Contractor shall carry out such written orders promptly.

§ 7.5 CONTRACTOR-INITIATED CHANGES IN THE WORK

The Contractor may submit a Change Order Proposal on its own initiative if the Contractor believes an interpretation of the Contract Documents by the Architect or a minor change in the Work ordered by the Architect constitutes a change to the Work. The Change Order Proposal shall conform with Section 7.3.7 and include a detailed description of the claimed change to the Work with appropriate references to the Contract Documents. If the Owner accepts the Change Order Proposal, the Owner shall instruct the Architect to issue a Change Order incorporating the Change Order Proposal. If the Owner rejects the Change Order Proposal, the date of the Contractor's receipt of notice that the Owner has rejected the Change Order Proposal commences the running of the time period during which the Contractor must submit a Notice of Claim pursuant to Section 15.1.2.

§ 7.6 SUBSTITUTION OF MATERIAL OR EQUIPMENT

§ 7.6.1 The Contractor may request approval of a substitution of specified materials or equipment by submitting a Change Order Proposal which shall conform with Section 7.3.7 and include a description of the material or equipment to be substituted and of the material or equipment required by the Contract Documents with reference to the sections requiring the material or equipment. By requesting approval of a substitution of a specified material or equipment, the Contractor represents that:

- .1 the Contractor has personally investigated the proposed material 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 Contractor will provide the same or better warranty for the substitution than for the material initially specified;
- .3 the cost data presented is complete and includes all related costs including the Architect's review and redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 the Contractor will coordinate the installation of the accepted substitute making such changes as may be required for the Work to be complete in all respects.

§ 7.6.2 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 Architect approves and accepts responsibility for the substitution by incorporating the substitution in the Contract Documents. If the Contractor proposes a substitution that does not satisfy the requirements of Section 7.6.1, the Contractor shall be responsible for all costs incurred by the Owner in reviewing the request, including without limitation the cost of the Architect's review, whether or not the Owner accepts the proposed substitution.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The term "Business Day" as used herein shall mean and refer to any day that the University of Minnesota is open to the general public. In the event that the 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.

§ 8.2 PROGRESS AND COMPLETION

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion 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 Contractor 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 Contractor 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 Contractor or anyone for whom the Contractor is liable, and (2) failure of the Owner to give such direction shall not relieve the Contractor from its obligations to perform the Work in accordance with the schedule established in the Contract.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work as reflected in Change Orders approved by the Owner that provide for the Contract Time to be extended; or by unavoidable delay as defined in Section 8.3.4, then the Contract Time shall be extended by Change Order for such reasonable time as is necessary to account for the impact of the delay on the progress of the Work.

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

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

§ 8.3.4 For purposes of Section 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 Contractor 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; or
- .6 late delivery of materials resulting from strikes, lock-outs, freight embargoes, government acts, or sudden disaster of nature beyond the power of the Contractor or supplier to foresee or forestall; or
- .7 **any other cause that the Contractor 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 Contractor or anyone for whom the Contractor is liable.**

§ 8.3.5 The Contractor shall not be entitled to an extension of the Contract Time or additions to the Contract Sum for delays attributable to causes other than those listed in Section 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 Contractor to avoid; and
- .4 plant or equipment failure of less than four hours duration or of any duration due to the Contractor's failure to provide and maintain the equipment in good mechanical condition, or to provide for immediate emergency repairs.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.1.2 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract 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 Contractor.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect and the Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment. 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.

§ 9.2.2 Before commencing the Work, and from time to time upon request from the Owner, the Contractor shall furnish a schedule of estimated periodic requests for payment for the Owner's financial planning guidance. 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 Contractor will not be bound to the estimated amounts, but should the actual requested amounts tend to vary substantially from the estimates, the Contractor shall revise the schedule and deliver the revised schedule to the Owner.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least 37 days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required by the Owner, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage of 5% from amounts due, including amounts due for payment of Contractor's Fee and for Work performed by Contractor's own personnel and by Subcontractors.

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§ 9.3.1.1 Intentionally Deleted

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work performed by Subcontractors or provided by material suppliers, unless the Contractor intends to pay the Subcontractors or material suppliers.

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

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

§ 9.3.4 The Contractor may request advance approval by the Owner of payment for materials and equipment stored off-site pursuant to Section 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 in off-site storage and the conditions for payment.
- .2 Notwithstanding any advance approval or anything herein to the contrary, the Owner will not pay for materials or equipment in off-site storage, 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-site, at the start of the Work the Contractor shall submit a proposed list to the Architect for review and concurrence. The list shall include:
 - .a the item;
 - .b the reasons for the off-site storage;
 - .c proposed storage location; and
 - .d anticipated delivery time to the off-site storage.
- .4 To qualify for consideration, the material or equipment shall be at least one of the following:
 - .a a major item;
 - .b specially fabricated or produced for the Work of this Contract and shall be in accordance with the Contract 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 9.3.4 must also be all of the following:
 - .a properly stored and protected, as required by Section 9.3.3, and approved by

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- the Owner, including marking with the Project name;
- .b certified by the Contractor, Subcontractor or supplier to be in storage and immediately available (when required);
- .c examined by the Architect at the place of storage;
- .d furnished at no additional cost or expense to the Owner except the time required to examine the items, unless otherwise authorized by the Owner; and
- .e insured to the satisfaction of the Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

§ 9.5.2 When the above reasons for withholding certification are removed, the Architect shall issue a Certificate for Payment for corresponding amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work

properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 If the Contractor disputes any determination by the Architect with regard to any Certificate for Payment, the Contractor nevertheless shall continue to prosecute the Work expeditiously.

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner will make payment within 30 days of receipt of such Certificate, and will so notify the Architect that it has done so.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than ten days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. The Contractor will promptly and publicly post on the work site the listing of paid Applications for Payment to date, pursuant to Minnesota Statutes, Section 137.36. If the Contractor fails to pay a Subcontractor amounts due within ten days of receipt of payment from the Owner, the Contractor shall pay the amount due to that 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.

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

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

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

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

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

§ 9.6.6 A Certificate for Payment or a progress payment shall not constitute acceptance of Work.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. In the event the Contractor elects to stop Work under this Section 9.7, upon recommencing the Work, the Contractor may seek a Change Order or assert a Claim for adjustment of the Contract Time and the Contract Sum by the amount of the Contractor's reasonable costs of shut-down, delay and start-up.

§ 9.8 SUBSTANTIAL COMPLETION

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect 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 Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Contractor shall pay costs, if any, incurred by the Owner in connection with the reinspection.

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance 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 Contract Documents. The Owner shall have the right to withhold payment of 150% of the value of any Work that is incomplete or not in accordance with the requirements of the Contract Documents, as determined by the Owner in the Owner's discretion, until the Contractor corrects such Work.

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 The Architect shall promptly make final inspection of the Work upon receipt from the Contractor of (1) written notice that the Work is ready for final inspection and acceptance and (2) a final Application for Payment. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, and the Contractor has delivered to the Owner (1) a bound compilation of all warranties and operation manuals applicable to the Project and (2) a complete set of the documents described in Section 3.11, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation by the Architect that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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 Contract Documents to remain in force after final payment is currently in effect and will remain in effect to the extent required by the Contract Documents, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract 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 Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor 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 Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and

reasonable attorneys' fees. The Contractor's obligations under this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, 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 Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 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 Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of warranties required by the Contract Documents; or
- .4 any other duties or obligations of the Contractor that by the terms of the Contract survive the Owner's acceptance of the Work or termination of the Contract.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 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, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-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.

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, 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.

§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a qualified laboratory to verify the presence or absence of the material or substance reported by the Contractor. 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 Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 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 Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses arising out of or resulting from performance of the Work in the affected area to the extent that such claim, damage, loss or expense is attributable to bodily injury or death as described in Section 10.3.1, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 Subject to Section 10.3.5, if, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. Such indemnity obligation shall survive the Owner's acceptance of the Work or termination of the Contract.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. The Contractor shall promptly notify the Owner of any emergency affecting the Project. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase and maintain insurance from 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 Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor 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 Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor'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 Contractor's obligations under Section 3.18;
- .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 Other claims, if any, specifically described in attached Schedule 11.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than the limits of liability specified in attached Schedule 11, the Contract Documents or required by law, whichever coverage is greater. Any aggregate limit under the Contractor's primary commercial

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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 Contract 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 Contract Documents, and, with respect to the Contractor'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.

§ 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 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 Section 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 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 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 Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause all liability coverage the Contract Documents require the Contractor to maintain (other than Employers Liability and Professional Liability Insurance, if any) to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations, and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. Such additional insured coverage shall be primary and any insurance obtained by the Owner or any other additional insured (including self-insurance) shall be excess and noncontributory. The Owner and other additional insureds shall not become responsible for payment of insurance premiums by reason of the naming of the Owner and the others as additional insureds. As an additional insured the Owner and each other additional insured shall have all the rights, coverages, and limits afforded the Contractor 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 Contractor's expense.

§ 11.1.5 The Contractor shall cause all liability coverage the Contract Documents require the Contractor to maintain (other than Employers Liability and 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 Contractor agrees to waive and shall require all Subcontractors and Sub-subcontractors at any tier to waive all subrogation and recovery rights on behalf of themselves and their insurers against the Owner and its employees.

§ 11.1.6 The Contractor may use an Umbrella or Excess Liability insurance policy to supplement the Contractor's policy limit to satisfy the full policy limits required by the 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.

§ 11.1.7 Damages covered by the Contractor's pollution liability insurance shall include bodily injury, property damage, environmental damage, loss of use of property, governmental ordered

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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 the Contractor's operations under the 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 Contractor transported materials. Contractor's pollution liability insurance may be on a claims made basis. Claims-made provisions, if any, must have a retroactive date of policy inception and Contractor shall maintain the specified coverage for a minimum of five years after Substantial Completion.

§ 11.1.8 OTHER CONDITIONS OF CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.8.1 The Contractor 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 Contract if the insurance the Contractor is required to maintain under this Contract is cancelled, non-renewed, reduced in coverage below the level required in this Contract, or an insurance carrier rating is downgraded below an A-VII, and the Contractor fails 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 Contractor).

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

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

§ 11.1.8.4 The Contractor will require its Subcontractors to maintain the same insurance the Contractor is required to maintain (including coverage, endorsements and limits). Alternatively, if approved by Owner in writing, the Contractor may use a Controlled Insurance Program ("CIP"). If the Contractor is permitted by the Owner to use a CIP for the Project, the Contractor shall require its Subcontractors to maintain insurance as outlined in the CIP Requirements and Forms Manual approved by Owner in writing, a copy of which Manual shall be attached to and incorporated into this Contract. Upon request by the Owner, the Contractor shall provide evidence of its Subcontractors' insurance to the Owner, including without limitation, certificates of insurance or certified insurance policies and endorsements.

§ 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 Contractor. The Contractor shall be responsible to pay the full amount of any deductibles or self-insured retentions of any coverages.

§ 11.1.8.6 The Contractor 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 Contractor or any Subcontractor on the Project.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

The Owner shall maintain a master "All Risks" Property Insurance Policy (the "All Risks Policy") that insures the interest of the Owner, the Contractor, Subcontractors and Sub-subcontractors

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at any tier in the Work . Unless otherwise provided in the Contract Documents, the Work under this Contract will be insured under the All Risks Policy, subject to the limits, sublimits and exclusions of such policy and the provisions of the Contract Documents.

§ 11.3.1 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 All Risks 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, supplies 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.

§ 11.3.1.1 The All Risks Policy contains a loss deductible clause, in the amount of \$500,000 for each and every loss occurrence.

§ 11.3.1.2 The Contractor shall be responsible for the first \$500,000 in cost and expenses associated with any direct physical loss or damage to the Work for each and every occurrence.

§ 11.3.1.3 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.

§ 11.3.1.4 The All Risks Policy shall not cover, and neither the Owner nor the Architect shall be responsible for, loss or damage to property of any kind owned or leased by the Contractor, the Subcontractors, the Sub-subcontractors at every tier, or their employees, servants, or agents that is not destined to become a permanent part of the Project.

§ 11.3.1.5 Intentionally Deleted

§ 11.3.2 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, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds. The Contractor 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.

§ 11.3.3 Intentionally Deleted

§ 11.3.4 Intentionally Deleted

§ 11.3.5 Intentionally Deleted

§ 11.3.6 Intentionally Deleted

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-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 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 Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and

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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 obligations in this Section 11.3.7 shall survive the Owner's acceptance of the Work or termination of the Contract.

§ 11.3.8 REPORTING AND ADJUSTING PROPERTY INSURANCE CLAIMS. 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 Contractor. The Owner and Contractor shall promptly report all claims to their respective insurance carriers in accordance with the policy conditions.

(Paragraphs deleted)

§ 11.3.8.1 In the event of any loss which is equal to or less than the \$500,000 deductible, the Contractor shall immediately repair, replace, rebuild or otherwise remedy the loss to prevent or minimize delay of the Project.

§ 11.3.8.2 In the event of an loss in excess of the \$500,000 deductible, if no other special agreement is made and unless the Owner terminates the Contract for convenience, the Owner may order the Contractor to replace damaged property by notification of a Change in the Work in accordance with Article 7.

§ 11.3.8.3 The Contractor shall cooperate with the Owner and the insurance adjusters to determine the value of any loss. All losses covered under the Owner's All Risks Policy shall be adjusted by the policy insurers and proceeds from the All Risks Policy shall be payable to the Owner. After the Contractor has received payment on a loss, the Contractor shall pay each Subcontractor a just share of any uninsured loss the Contractor is responsible for, including deductible amounts, and of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to its Sub-subcontractors in similar manner.

§ 11.3.8.4 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.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond (individually, a "Bond," collectively, the "Bonds") to the Owner. The Performance Bond shall be in an amount equal to 100% of the full amount of the Contract Sum as security for the faithful performance of the Contract Documents, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Contract Sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such Bonds shall be on forms approved by the Owner and shall name the Owner as a primary obligee.

§ 11.4.2 The sureties issuing the Bonds (individually, a "Surety," collectively, "Sureties") shall be satisfactory to the 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 Contractor and the Bonding Agent or Agency.

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§ 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 10% of the penal sum. Any aggregate increase in excess of 10% of the original penal sum shall require the Surety's written consent.

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

§ 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 Contractor 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 Contractor shall pay the premiums on such new bond(s). The Contractor shall be entitled to reimbursement of the costs of such substitution as a Change Order increasing the GMP only if the bonds provided by the Contractor meets the requirements of Section 11.4.2 at the time the Owner requests such substitution. The Contractor acknowledges that further payments to Contractor may not be made until the new sureties have been qualified and approved by the Owner.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect, the Owner or any governmental authority or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Additionally, the Contractor shall be responsible for and the Owner may collect from the Contractor, or deduct from payments or sums due to the Contractor under this Contract or any other contract between the Owner and the Contractor (1) the reasonable value of the time of all Owner personnel involved in the correction of such rejected Work, (2) the reasonable value of the time of all Owner personnel involved in reinspections of the corrected Work, and (3) compensation for the Architect's services (whether basic or additional) and expenses associated with such re-inspection.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Article 3, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of an applicable warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, promptly after receipt of written notice from the Owner, the Contractor shall correct the defective Work. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 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 completion of that portion of the Work.

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

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

§ 12.2.4 The Contractor 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 Contract Documents, (2) all costs incidental to any required redesign by the Architect, 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 Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced 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 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The internal laws of the State of Minnesota shall govern the validity, construction and enforceability of this 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 Contract shall be in the courts of record of the State of Minnesota and venue shall be in Hennepin County.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as set forth in Section 5.4, neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Owner may withhold its consent in its sole 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 Contract.

(Paragraph deleted)

§ 13.3 WRITTEN NOTICE

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.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Unless specifically stated in the Contract or otherwise agreed to in writing, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, 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 the Contract Documents or imposed or available at law.

§ 13.4.3 If the Owner has the right to collect any amount from the Contractor under this Contract, including a right to an adjustment in the Contract Sum, that right shall include the right to deduct any amount due from payments due the Contractor under this Contract and, if payments due the Contractor under this Contract are not sufficient to cover such amounts, or if Owner has made final payment, the Owner may set off the amount due against any account or agreement with the Contractor and may bring legal action to collect the amount due.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 The Contractor shall coordinate, schedule and provide safe access for tests, inspections and approvals of portions of the Work to be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make prompt arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, and, if applicable, with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. Except to the extent required due to the failure of the Contractor to perform the Work in accordance with the

Contract Documents, the Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

In no event shall any interest be due and payable by the Owner to the Contractor, any Subcontractor or any other party on any of the sums which the Owner is authorized to retain pursuant to the Contract Documents.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor 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 the Contract within the time period specified by applicable law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction through no fault of the Contractor that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

§ 14.1.2 Intentionally Deleted

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon 14 days' written notice to the Owner and Architect (given after the Work has been stopped for 30 consecutive days), terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on completed Work (but not overhead or anticipated profit for Work not yet executed), costs incurred by reason of such termination, and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of commencement of same, makes an assignment for the benefit of its creditors, has a receiver appointed to manage the Contractor's assets or otherwise is or becomes insolvent;
- .5 fails to maintain schedules as required by the Contract Documents;
- .6 fails to perform the Work in accordance with the Contract Documents;
- .7 makes a false statement in the Compliance Certificate (University Document 00900) and/or supplemental verification verifying compliance with Minn. Stat. § 16C.285, Subd. 3 (if applicable); or
- .8 otherwise substantially breaches a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and

other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall promptly pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract, and include the right of set off by the Owner against any account or agreement with the Contractor.

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on completed Work (but not overhead or anticipated profit for Work not yet executed).

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. 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.

At the next Project meeting following delivery of the notice of a Claim, or such earlier date as the parties may agree, the Owner and the Contractor shall attempt to resolve such Claim through discussions between their respective representatives. The Owner may require the Architect to participate in such discussions. If a Claim is not resolved through discussions between the representatives of the Owner and the Contractor within 30 days after the initial meeting, then either party may proceed with mediation pursuant to Section 15.3.1, subject to the Owner's right to require an Initial Decision, pursuant to Section 15.2. The terms of this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Owner.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor 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 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

§ 15.1.5.2 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.

(Paragraphs deleted)

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims not resolved at the initial meeting under Section 15.1.2, excluding those arising under Sections 10.3 and 10.4 may, in the Owner's discretion, be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. If the Owner elects to refer a Claim to the Initial Decision Maker, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing, (2) state the reasons therefor, and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue litigation with respect to the initial decision.

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

(Paragraph deleted)

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4 and 9.10.5 shall be subject to mediation as a condition precedent to litigation. The terms of this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint in litigated proceedings but, in such event, mediation shall proceed in advance of 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.

§ 15.3.3 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.

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ARTICLE 16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

§ 16.1 The Contractor shall not discriminate against Subcontractors, or employees, or applicants for employment 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 Contractor shall ensure that Subcontractors do not discriminate against employees, Sub-subcontractors or applicants for employment or Sub-subcontracting because of membership in any Protected Class.

§ 16.2 The Contractor 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 16.1.

§ 16.3 For contracts and/or subcontracts exceeding \$100,000, the Contractor 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 Contract. The Contractor shall 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 Contract.

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

§ 16.5 Before commencing the Work, the Contractor 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.

§ 16.6 The Contractor 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 Contractor shall make maximum use of apprentices to develop qualified minority and female personnel. The Contractor shall seek to fill labor shortages for apprentices and skilled journeymen by upgrading present employees including qualified minority and female employees.

§ 16.7 The Contractor 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 16. The Contractor shall permit access to its books, records, and accounts by the Owner for the purpose of ascertaining compliance with these provisions.

§ 16.8 Noncompliance with any equal employment provision of the Contract shall be a material default under the Contract, which the Contractor 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 Contract amount. The Owner and the Contractor acknowledge and agree that the actual extent of losses the Owner will incur as a result of the failure of the Contractor to comply with the equal employment provision of the Contract cannot reasonably be determined as of the date of this Contract, and the liquidated damages amount is reasonable under the circumstances and not a penalty.

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

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

ARTICLE 17 MINIMUM WAGE RATES

§ 17.1 In accordance with Owner's policy, the Contractor, 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 on the site at least the Prevailing Wage Rate applicable to their respective class of labor in the county in which the Project is located.

§ 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 Contractor is responsible for compliance by all Firms.

§ 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.

§ 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.

§ 17.5 The term "Prevailing Hours of Labor" refers to the number of hours of labor per day and per week for 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 Contractor 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.

§ 17.6 At the Owner's request, Firms shall furnish to the Contracting Agent 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.

§ 17.7 "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>.

§ 17.8 "Contracting Agent" refers to the Owner's representative.

§ 17.9 If the Owner becomes aware that Firms are not paying Prevailing Wage Rates or paying time and one-half rates for hours exceeding Prevailing Hours of Labor, it will consider such non-compliance a material breach of the Contract. The Contractor 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, Contractor shall immediately pay Owner the total amount of the underpayment of wages plus 5%. The Owner and the Contractor acknowledge and agree that the actual extent of Owner 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.

§ 17.10 The Contractor shall hold the Owner harmless, defend (with counsel reasonably acceptable to the Owner) and indemnify the Owner 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 Contractor's obligations under this Section 17.10 shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 17.11 By requiring the Contractor to pay the wages under subparagraph Sections 17.1 and 17.2 or to pay any other minimum wage rates, neither the Owner nor the Architect represent that labor may be employed at the minimum hourly wage. The Contractor 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.

§ 17.12 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 Contractor 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 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 Contractor shall obtain the proper rate from the Department. If necessary, the Contractor shall assist in obtaining a decision or clarification on incorrect or missing rates.

§ 17.13 If the Contractor or Subcontractor at any tier fails to pay any of its laborers or mechanics prevailing wages as provided herein, such 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 reasonably acceptable to the Owner) and hold the Owner harmless for 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 Contractor or Subcontractor that said Contractor's or Subcontractor's failure to so pay prevailing wages results from the intentional misconduct or gross negligence of such Contractor or Subcontractor, then the Contractor shall be liable to and pay to the Owner (or the Owner may withhold from payments owed to the Contractor), as liquidated damages, a sum equal to 5% of the unpaid wages. The Owner and the Contractor acknowledge and agree that the actual extent of Owner losses the Owner will incur as a result of the failure of the Contractor or any subcontractor to pay prevailing wages cannot reasonably be determined as of the date of this Contract, and the liquidated damages amount does not constitute a penalty but is reasonable under the circumstances and shall be in addition to but not limit on any rights and remedies otherwise available to the Owner. The Contractor's obligations under this Section 17.13 shall survive the Owner's acceptance of the Work or termination of this Contract.

(Paragraph deleted)

ARTICLE 18 PROHIBITION AGAINST GRATUITIES

(Paragraph deleted)

§ 18.1 ACCEPTANCE OF ADVANTAGE

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

(Paragraph deleted)

§ 18.1.2 The Contractor agrees that its participation with any employee of the Owner in acts that violate Minnesota Statutes, Section 15.43 constitutes a material default under this Agreement entitling the Owner to terminate for cause, pursuant to Section 14.2.

(Paragraph deleted)

§ 18.1.3 By signing the proposal for this Project and by signing the Contract Documents, the Contractor certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially or materially from this Contract.

ARTICLE 19 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT, AND SMALL BUSINESS PROGRAM

(Paragraph deleted)

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

ARTICLE 20 USE OF NAME OR LOGO

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

(Paragraph deleted)

ARTICLE 21 MINNESOTA GOVERNMENT DATA PRACTICES ACT AND CONFIDENTIAL INFORMATION

§ 21.1 The Contractor shall comply with Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") with regard to any information the Owner provides to the Contractor that is subject to the Act. The Contractor 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 Contractor shall return any documents or other information the Owner has supplied to the Contractor 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.

(Paragraph deleted)

§ 21.2 The Contractor shall not use or disclose and shall not permit others to use or disclose Confidential Information without the Owner's prior written approval. The Contractor 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 Contractor's obligations under this Section 21 and (2) the Contractor has provided the original written agreement to the Owner.

§ 21.3 The term "Confidential Information" means all Owner knowledge, information, data, materials, and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Contractor and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that the Contractor can show (by contemporaneous written records) that the Contractor had it in its possession before beginning the Project and before disclosure by the Owner.

(Paragraph deleted)

§ 21.4 The Contractor agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section 21. The Contractor agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section 21.

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

§ 21.6 The Contractor's obligations under this Section 21 shall survive the Owner's acceptance of the Work or termination of this Contract.

ARTICLE 22 AUDIT

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

§ 22.2 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 Contractor'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 Contract. In those situations where Contractor's Records have been generated from computerized data, the Contractor agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

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

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

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

§ 22.6 If an Audit discloses overpricing or overcharges (of any nature) by the Contractor 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 Contractor. 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 Contractor.

ARTICLE 23 NO-STRIKE PROVISION

If the Contractor provides unionized labor, then the Contractor shall have in effect throughout the performance of this 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 Contractor shall require Subcontractors at any tier to include the same requirements in any collective bargaining agreements to which they are a party. The Contractor shall be liable for all direct and consequential damages attributable to any delay caused by the failure of the Contractor to include, or require its Subcontractors to include, such requirements in such collective bargaining agreements.

SCHEDULE 11 CONTRACTOR INSURANCE REQUIREMENTS

General Liability*

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

Including the following coverages:

Premises and Operations – Bodily Injury and Property Damage

Products and Completed Operations – Bodily Injury and Property Damage

Personal Injury and Advertising Injury

Contractual Liability as provided in ISO form CG 00 01 12 04 **

Pollution exclusion with standard exception per ISO form CG 00 01 12 04 **

Waiver of Subrogation in favor of the Owner

Additional Insureds for ongoing and completed operations on

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ISO forms CG 2010 07 04 and CG 2037 07 04 **

Automobile Liability*

Combined Single Limit – Bodily Injury/Property Damage \$5,000,000
Owned, hired and non-owned automobiles.
Additional Insureds endorsement on ISO form CA 2048 02 99 **
Waiver of Subrogation in favor of the Owner

Worker’s Compensation

Statutory
a. Coverage B - Employers’ Liability as described below
b. Coverage C: All States Coverage
c. If applicable, USL&H and Voluntary Compensation

Employer’s Liability*

Each Accident \$5,000,000
Disease - Policy Limit \$5,000,000
Disease - Each Employee \$5,000,000

Contractor’s Pollution Liability

Each Occurrence or Claim \$2,000,000
Aggregate \$2,000,000

Builder’s Risk

Coverage of University Deductible \$500,000

Professional Liability (Errors and Omissions)

Each Occurrence or Claim \$2,000,000
Aggregate \$2,000,000

The Contractor is required to maintain professional liability coverage only if the Contractor is providing construction management or professional design services. Professional Liability coverage may be on a claims-made basis. The policy will have a retroactive date before the start of the Work and will remain in effect for not less than five years after Substantial Completion.

* Contractor may use an Umbrella/Excess policy to provide or supplement the full policy limit.

** Or equivalent as approved by the Owner.

(Paragraph deleted)

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

...

The Contract Documents form the ~~Contract for Construction. The Contract represents~~ Contract. The term "Contract" means the entire and integrated agreement between the parties hereto and Owner and the Contractor. The Contract supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's ~~consultants~~ consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of the obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section ~~15.2 and certify~~ 15.2, certify termination of the Agreement under Section 14.2.2 and certify payment to the Contractor upon termination of the Agreement under Section 14.2.2.

...

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are ~~complementary, complimentary,~~ and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required ~~only~~ to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

...

§ 1.2.4 In the case of any inconsistency between, among or within any Contract Document not clarified by an Addendum, the Contractor shall perform the Work in accordance with the Architect's interpretations. For purposes of determining whether the Contractor has performed the Work in accordance with the Contract Documents or whether the Owner or the Contractor is entitled to an adjustment in the Contract Sum as a result of any inconsistency in the Contract

Documents, the parties shall deem the Contract to have required the Contractor to provide the higher quality, greater quantity, more restrictive and/or more expensive alternative.

§ 1.2.5 Where a Contract 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 Contract Document shall apply to this Project.

...

§ 1.5
OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

~~If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.~~

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner may act with regard to the Contract through its Board of Regents, the President, the Vice President for University Services and his or 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 matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor 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.

~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. The Owner shall furnish surveys described in Section 2.2.3 and other information prepared by third parties for the Project to the extent the Owner deems necessary for the performance of the Contractor's services. The Owner makes no representations or warranties as to the accuracy of the information it obtains from third parties and provides to the Contractor pursuant to this Section 2.2. In addition, the Owner may provide the Contractor 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 Contractor from the Owner's records.~~

...

~~§ 2.2.3 The Subject to Section 2.2.1, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Project to the extent utility locations can be determined by review of readily available records, observation of surface conditions, or other standard surveying practices.~~

~~§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents (other than documents incorporated by reference) for purposes of making reproductions pursuant to Section 1.5.2.~~

~~§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.~~

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

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails ~~within a ten-day period~~ after receipt of 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 Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to carry out the Work pursuant to this Section 2.4 shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.5 OWNER'S RIGHT TO INSPECT AND REJECT THE WORK

The Owner shall have the right to reject Work that does not conform to the Contract Documents and to require inspection and testing of the Work to the same extent as the Architect's authority under Section 4.2.6. Neither this right, nor the exercise or failure to exercise this right, shall give rise to any duty or responsibility on the part of the Owner to the Contractor, the Architect, or any other person or entity.

...

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

...

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

§ 3.1.4 Execution of the Contract by the Contractor is a representation by the Contractor that (1) the Contractor is 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 Contract Documents in an efficient and capable manner, (2) the Contractor is authorized to do business as a contractor in the jurisdiction where the Project is located, and (3) the person(s) executing the Agreement on behalf of the Contractor are properly authorized to do so.

§ 3.1.5 The Contractor shall exercise the skill and care of a sophisticated contractor with experience in projects similar to the Project.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated performed, reviewed information provided by the Owner and obtained by the Contractor from the other sources, and correlated such information and personal observations with requirements of the Contract Documents. Documents, and knows of no reason why the Contractor cannot perform the Work for the Contract Sum and within the Contract Time.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section ~~2.2.3~~, 2.2, and information obtained by the Contractor from any source, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any apparent errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

...

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor 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 Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner and the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the ~~Owner shall be solely~~ Contractor shall not be responsible for any loss or damage arising solely from those ~~Owner required~~ Owner and/or Architect-required means, methods, techniques, sequences or procedures.

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

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

...

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, substitutions, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Directive only with the written consent of the Owner, which the Owner may withhold in its sole discretion.

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

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

§ 3.4.5 The Contractor agrees that it is an independent contractor 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 any payroll taxes or contributions. The Contractor agrees to indemnify, defend (with counsel reasonably 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 Contractor's employees, including but not limited to attorneys' fees. The Contractor's obligations under this Section 3.4.5 shall survive the Owner's acceptance of the Work or termination of the Contract.

§ 3.4.6 The Contractor 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 federal, state and local laws, ordinances and regulations as they affect performance of this Contract, 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.

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

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

§ 3.5.1 The Contractor warrants to the Owner and the Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work,

materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The term "defective Work" means Work that does not conform to the requirements of the Contract Documents, including, without limitation, incomplete Work.

§ 3.5.3 During the first year following the date of Substantial Completion of the Work, the Owner's remedies for breach of contract shall include, but not be limited to, correction of the Work pursuant to Section 12.2.

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

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

...

§ 3.7

PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS PERMITS, FEES, NOTICES, COMPLIANCE WITH LAWS AND CONCEALED OR UNKNOWN CONDITIONS

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

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

§ 3.7.4 ~~Concealed or Unknown Conditions. If~~ **Except to the extent assumed by Contractor in Contractor's Quality Control Plan**, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents ~~Documents~~, or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~21~~ **seven** days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the

conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and the Contractor in writing, stating the ~~reasons~~ reasons for such determination. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

...

- .1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

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

...

§ 3.9 SUPERINTENDENT AND PROJECT MANAGER

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall ~~furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~ Agreement identifies the project manager and superintendent the Contractor will employ for the Project.

§ 3.9.3 The Contractor shall not ~~employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~ change the project manager or superintendent without the Owner's written consent, which the Owner may withhold in its sole discretion.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed ~~time limits current under the Contract Documents, shall be revised at the~~ current time limits under the Contract Documents, 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 Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's ~~approval. The Architect's approval shall not unreasonably be delayed or withheld.~~ review. The submittal schedule will identify submittals and samples in sufficient detail

for the Architect to evaluate whether the submittal schedule is properly inclusive and properly sequenced. The Architect and Owner will promptly review the submittal schedule and raise appropriate concerns. The Contractor, Owner and Architect will work together to agree to a submittal schedule that serves the needs of the Work. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

...

~~The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~ § 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 The Contractor shall maintain all approved permit drawings in a manner that is accessible to the Architect, the Owner, and government inspectors. The Contractor shall mark and deliver all approved permit drawings to the Owner before final payment.

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§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such 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 professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section ~~3.12.10~~, 3.12.10 and Section 4.2.7, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

The Contractor 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, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall keep areas outside the construction limits free from all construction debris, building materials and equipment likely to cause hazardous conditions. The Contractor acknowledges that the site may be within an active university campus and agrees to restrict access by students, faculty, and others to the area within the construction limits and minimize construction traffic and other interference with activities in areas outside the construction limits. The Contractor 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 Contractor 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.

...

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

§ 3.14.2 The Contractor 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 Contractor shall not cut or otherwise alter such existing construction or 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 Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

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

The Contractor shall provide the Owner and the Architect with safe and proper access to the Work in preparation and progress wherever located. The Contractor shall provide safe and proper facilities for such access by the Owner and the Architect and for testing and inspections and shall secure and protect samples and testing equipment.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights (with counsel reasonably acceptable to

the Owner) and shall hold the Owner and Architect 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 by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect. The Contractor's obligations under this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify law, the Contractor shall indemnify, defend (with counsel reasonably acceptable to the Owner) and hold harmless the Owner, Architect, Architect'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), but only to the extent caused by the negligent acts or omissions of, relating to, or resulting from (a) the breach or alleged breach of the Contract Documents by the Contractor; and/or (b) the negligent act or omission of the 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 which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel reasonably acceptable to the Owner) and hold harmless the Owner against any assertion of claims, including without limitation any assertion of security interests, by Subcontractors, Sub-subcontractors or material suppliers for payment for Work or materials for which Owner has paid the Contractor.

§ 3.18.1.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel reasonably 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 Contractor's performance of the Work. As used in the Contract Documents, "labor-related activity" includes, but is not limited to, strikes, walk outs, informational or organizational picketing, use of placards, distribution of hand outs, leaflets or other similar acts at or in the vicinity of the Project or in the vicinity of any other facility where the Owner conducts business. The Owner shall advise the Contractor if any labor-related activity occurs and the Contractor shall arrange for the legal representation necessary to protect the Owner's interest, with counsel reasonably acceptable to the Owner.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1, Section 3.18.1.1, and Section 3.18.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The Contractor's obligations under Section 3.18 shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 3.19 PROGRESS REPORTS AND MEETINGS

§ 3.19.1 PROGRESS REPORTS The Contractor 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 Contractor shall cooperate with the Owner to prepare such additional reports as required by the Owner.

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

§ 3.20 PROJECT MANAGEMENT INFORMATION SYSTEM

§ 3.20.1 The Owner may, at its sole option, direct the Contractor to use the Owner's internet-based Project Management Information System. The functionality of this software includes, 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.

§ 3.20.2 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 Contractor's designated Project representative(s) at no cost to the Contractor. Except for licenses and initial training, the Owner assumes no responsibility for any costs associated with the use of this software by the Contractor.

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§ 4.1.3 If the employment of the Architect is terminated, the Owner shall ~~employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~ notify the Contractor in writing designating the individual or entity to whom the Owner has assigned the Architect's remaining construction administration responsibilities.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate ~~for~~ For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and the Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. Notwithstanding the foregoing, the Owner and the Contractor may communicate with each

other directly if they provide the Architect with copies of written communications and written confirmation of any oral communications affecting the Work or the Architect's duties.

...

§ 4.2.6 The Architect ~~has authority to~~ shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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§ 4.2.10 ~~If the Owner and Architect agree, the~~ The Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The Architect will keep the Owner and the Contractor apprised of the identities of its representatives and the duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. each representative.

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

...

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

§ 5.1.2 A Sub-subcontractor is a person or entity ~~who~~ that has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is

referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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~~§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the~~ The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed ~~for each principal portion of the Work. The Architect as Subcontractors for each portion of the Work (including all persons or entities from which the Contractor proposes to solicit competitive bids or proposals, if required). For each named person or entity, the Contractor shall include the name, address of principal places of business, and the portion of the Work to be performed. The Architect, after consultation with the Owner, may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection~~ objects to any such proposed person or ~~entity~~ entity, or (2) that the Architect requires additional time for review. ~~Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~

If a Compliance Certificate (University Document 00900) and supplemental verification (University Document 00901) verifying compliance with Minn. Stat. § 16C.285, Subd. 3 (Responsible Contractor, Minimum Criteria) was required of Contractor in the solicitation response and prior to execution of the Contract, respectively, Contractor's list of first-tier subcontractors submitted as part of University Document 00901 shall be included in the writing required above. Within 14 days of retaining additional Subcontractors, Contractor shall submit a supplemental list of first-tier Subcontractors (excluding material suppliers, as defined in Minn. Stat. § 16C.285, Subd. 1(c)) on University Document 00902 naming all such additional Subcontractors. Prior to retaining the additional Subcontractors, Contractor shall provide the Architect and Owner the opportunity to review and object to the proposed additional Subcontractors as described above. Upon request from the Owner, the Contractor shall submit copies of the signed Compliance Certificates from all subcontractors of any tier and all motor carriers, as defined in Minn. Stat. § 16C.285, Subd. 1(e).

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

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

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

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~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor~~

~~so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~ § 5.3.1 The Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Notwithstanding any provision of Subsection 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor at any tier shall be pursuant to a written subcontract agreement between the Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier), which shall be prepared on a form of subcontract agreement satisfactory to the Owner. Each such subcontract shall require that such Work be performed in accordance with the Contract Documents.

If a Compliance Certificate (University Document 00900) and supplemental verification (University Document 00901) verifying compliance with Minn. Stat. § 16C.285, Subd. 3 (Responsible Contractor, Minimum Criteria) was required of Contractor in the solicitation response and prior to execution of the Contract, respectively, each such subcontract shall require the subcontractor at any tier (excluding material suppliers, as defined in Minn. Stat. § 16C.285, Subd. 1(c)) to submit a Compliance Certificate on University Document 00900 that includes a list of all subcontractors (excluding material suppliers) it intends to retain for Work on the Project. Further, each such subcontract shall also require any subcontractor at any tier (excluding material suppliers) to obtain a Compliance Certificate on University Document 00900 from each additional subcontractor it retains, and, within 14 days of retaining the additional subcontractors, to submit a supplemental list on University Document 00902 that names the additional subcontractors. Each said subcontract shall also require any subcontractor at any tier to submit copies of signed Compliance Certificates from all subcontractors of any tier and all motor carriers (as defined in Minn. Stat. § 16C.285, Subd. 1(e)) upon request.

§ 5.3.3 On request of the Owner, the Contractor shall submit to the Owner copies of all executed subcontracts, material and equipment supply contracts, and Purchaser Orders, including subsequent modifications, within seven calendar days of the date of the execution. Subcontractor's Certificates of Insurance and Performance and Payment Bonds, as required by the Contract Documents, shall be provided in the same manner.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and ~~obligations under the subcontract.~~obligations, provided the Contractor shall not be released from its obligations under the subcontract or to the Owner under this Contract.

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

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

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§ 6.1

~~OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS~~OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 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 under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.~~site. The Contractor shall cooperate with the Owner and separate contractors whose work might interfere with the Contractor's Work. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 ~~The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor 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 Contractor, separate contractors and the Owner until subsequently revised.

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

...

§ 6.2.4 ~~The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5. If such separate contractor initiates legal or other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, and the Contractor shall defend such~~

proceedings at its own expense, with counsel reasonably acceptable to the Owner, and if any judgment or award against the Owner arises therefrom, the Contractor 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 Contractor. The Contractor's obligations under this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

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If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Architect will allocate~~ the cost among those responsible.

...

§ 7.2 CHANGE ORDERS

...

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES AND CHANGE ORDER PRICING

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.3 If a Change Order or a Construction Change Directive provides for an adjustment to the Contract Sum, and the Contract Documents do not provide unit prices or another specific basis for adjustment, then the adjustment shall be based on one of the following methods, as determined by the Owner in its sole discretion (subject to the Contractor's right to assert a Claim in accordance with Article 15):

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation pursuant to Section 7.3.7; or
- .2 Cost of the Work to be determined in accordance with the Agreement, plus a mark-up for overhead and profit determined in accordance with Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and such unit prices shall provide the basis for adjustment of the Contract Sum, provided 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 Contractor, the applicable unit prices shall be equitably adjusted.

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~~§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:~~

- ~~.1 — Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~
- ~~.2 — Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~
- ~~.3 — Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~
- ~~.4 — Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~
- ~~.5 — Additional costs of supervision and field office personnel directly attributable to the change.~~

§ 7.3.7 CHANGE ORDER PROPOSAL AND CHANGE ORDER PRICING

Upon request by the Owner, or initiation of a Change Order by the Contractor pursuant to Section 7.5 or 7.6, the Contractor shall submit a Change Order Proposal identifying proposed changes in Contract Time and Contract Sum. If the Contractor proposes an adjustment in Contract Time, the Contractor shall submit an updated project schedule and submittal schedule. If the Contractor proposes an adjustments to the Contract Sum, and the Contract Documents do not provide unit prices or another specific basis for adjustment, the Change Order Proposal shall propose either a lump sum adjustment in the Contract Sum based on the Contractor's estimated increase or decrease in the Cost of the Work attributable to the Change, or propose an adjustment in the Contract Sum based on the Contractor's cost plus the mark-up described in Contractor's Proposal as modified by Owner ("Change Order Mark-up"), subject to the following:

- .1 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.
- .2 Notwithstanding anything to the contrary in the definition of Cost of the Work in the Agreement, the Contractor shall not apply the Change Order Mark-up to sales and use tax, if any.
- .3 Maximum Mark-up Percentage Allowable on Self-Performed Work: With respect to pricing Change Orders, the maximum mark-up percentage fee to be paid to

Contractor or any Subcontractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed eight percent (8 %) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the Change Order or extra Work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.

- .4 Maximum Mark-up Percentages Allowable on Work Performed by Subcontractors: With respect to pricing the portion of Change Order proposals involving Work performed by Subcontractors, the maximum markup percentage fee allowable to the Contractor or Subcontractor supervising the lower tier contractor's work shall not exceed five percent (5 %) of the net sum of all approved change Order Work performed by all Subcontractors combined for any particular Change Order proposal.
- .5 No Mark-up on Bonds and Liability Insurance Costs: Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any markup percentage Fee. [See 7.3.7.9 below]
- .6 Direct and Indirect Costs Covered by Mark-up Percentages: As a further clarification, the agreed upon maximum markup percentages allowable are intended to cover the Contractor's profit and all indirect costs associated with the Change Order Work. Items intended to be covered by the maximum markup percentages allowable include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; officers; project management; safety director, superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; auto and pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the maximum markup percentages allowable. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$1,000.00.
- .7 Deduct Change Order and Net Deduct Changes: The application of the mark-up percentage referenced in the preceding paragraphs will apply to both additive and deductive Change Orders. In the case of a deductive Change Order, the credit will be computed by applying the percentages as outlined in above so that a deductive Change Order would be computed in the same manner as an additive Change Order. In those instances where a change involves both additive and deductive Work, the additions and deductions will be netted and the mark-up percentage adjustments will be applied to the net amount.
- .8 Contingency: In no event will any lump sum or percentage amount for "contingency" be allowed to be added as a separate line item in Change Order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the Work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
- .9 General Liability Insurance and Bonds: In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds in relation to the base contract price, a final Change Order will be processed to account for the Contractor's actual net increase or decrease in

comprehensive general liability insurance costs and/or bond premium cost associated with Change Orders.

- .10 Accurate Change Order Pricing Information:** Contractor (on behalf of itself and all of its Subcontractors of any tier) agrees that it is responsible for submitting accurate cost and pricing data to support its lump sum Change Order and/or cost plus Change Order Proposals or other price adjustments under the Contract. Contractor further agrees to submit Change Order Proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of Change Orders. Contractor agrees that any "buy-out savings" on Change Orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a subcontractor or a material supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or Supplier for the approved Change Order Work.
- .11 Right to Verify Change Order Pricing Information:** Contractor (on behalf of itself and all of its Subcontractors of any tier) agrees that any designated Owner's representative/auditor will have the right to examine (copy or scan) the records of the Contractor, Subcontractor or Sub-subcontractor's records (during the Contract period and up to 12 years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order Proposal and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract price adjustment will be made. Such post-approval Contract price adjustments will apply to all levels of Contractors and/or Subcontractors and to all types of Change Order Proposals specifically including lump sum Change Orders, unit price Change Orders, and cost-plus Change Orders.
- .12 Requirements for Detailed Change Order Pricing Information:** Contractor, agrees to provide and require all Subcontractors and Suppliers of any tier to provide a breakdown of allowable labor and labor burden cost information. This information will be used to evaluate the potential costs of labor and labor burden related to Change Order Work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor cost components used to price Change Orders will be subject to later review by the Owner. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.
- .13 For Construction Manager at Risk Change Order work only:** Contractor 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 Contractor's Fee, if any) until the cumulative value of accepted Change Orders exceeds 5% of the original Contract Sum. In addition, Contractor shall not be allowed to separately charge, as a Cost of the Work or otherwise) any costs identified in Section 7.3.7.6 above, as such costs are deemed to be covered by Contractor's Fee.

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

~~§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~ **Intentionally Deleted**

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The Architect has authority to order or authorize 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 Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and ~~Contractor~~ the Contractor, subject to the right of the Owner and the Contractor to assert a Claim for adjustment in Contract Sum or Contract Time if either disagrees with the determination of the Architect. The Contractor shall carry out such written orders promptly.

§ 7.5 CONTRACTOR-INITIATED CHANGES IN THE WORK

The Contractor may submit a Change Order Proposal on its own initiative if the Contractor believes an interpretation of the Contract Documents by the Architect or a minor change in the Work ordered by the Architect constitutes a change to the Work. The Change Order Proposal shall conform with Section 7.3.7 and include a detailed description of the claimed change to the Work with appropriate references to the Contract Documents. If the Owner accepts the Change Order Proposal, the Owner shall instruct the Architect to issue a Change Order incorporating the Change Order Proposal. If the Owner rejects the Change Order Proposal, the date of the Contractor's receipt of notice that the Owner has rejected the Change Order Proposal commences the running of the time period during which the Contractor must submit a Notice of Claim pursuant to Section 15.1.2.

§ 7.6 SUBSTITUTION OF MATERIAL OR EQUIPMENT

§ 7.6.1 The Contractor may request approval of a substitution of specified materials or equipment by submitting a Change Order Proposal which shall conform with Section 7.3.7 and include a description of the material or equipment to be substituted and of the material or equipment required by the Contract Documents with reference to the sections requiring the material or equipment. By requesting approval of a substitution of a specified material or equipment, the Contractor represents that:

- .1 the Contractor has personally investigated the proposed material 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 Contractor will provide the same or better warranty for the substitution than for the material initially specified;
- .3 the cost data presented is complete and includes all related costs including the Architect's review and redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 the Contractor will coordinate the installation of the accepted substitute making such changes as may be required for the Work to be complete in all respects.

§ 7.6.2 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 Architect approves and accepts responsibility for the substitution by incorporating the substitution in the Contract Documents. If the Contractor proposes a substitution that does not satisfy the requirements of Section 7.6.1, the Contractor shall be responsible for all costs incurred by the Owner in

reviewing the request, including without limitation the cost of the Architect's review, whether or not the Owner accepts the proposed substitution.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The term "Business Day" as used herein shall mean and refer to any day that the University of Minnesota is open to the general public. In the event that the 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.

...

§ 8.2.2 The Contractor shall not ~~knowingly, except by agreement or instruction of the Owner in writing, prematurely~~ commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the ~~Contractor and Owner.~~ Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion 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 Contractor 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 Contractor 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 Contractor or anyone for whom the Contractor is liable, and (2) failure of the Owner to give such direction shall not relieve the Contractor from its obligations to perform the Work in accordance with the schedule established in the Contract.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, 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 Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay.~~ Work as reflected in Change Orders approved by the Owner that provide for the Contract Time to be extended; or by unavoidable delay as defined in Section 8.3.4, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. is necessary to account for the impact of the delay on the progress of the Work.

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§ 8.3.4 For purposes of Section 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 Contractor 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; or
- .6 late delivery of materials resulting from strikes, lock-outs, freight embargoes, government acts, or sudden disaster of nature beyond the power of the Contractor or supplier to foresee or forestall; or
- .7 any other cause that the Contractor 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 Contractor or anyone for whom the Contractor is liable.

§ 8.3.5 The Contractor shall not be entitled to an extension of the Contract Time or additions to the Contract Sum for delays attributable to causes other than those listed in Section 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 Contractor to avoid; and
- .4 plant or equipment failure of less than four hours duration or of any duration due to the Contractor's failure to provide and maintain the equipment in good mechanical condition, or to provide for immediate emergency repairs.

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

§ 9.1.2 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract 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 Contractor.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~ § 9.2.1 Where the Contract is based on a stipulated sum or

Guaranteed Maximum Price, the Contractor shall submit to the Architect and the Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment. 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.

§ 9.2.2 Before commencing the Work, and from time to time upon request from the Owner, the Contractor shall furnish a schedule of estimated periodic requests for payment for the Owner's financial planning guidance. 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 Contractor will not be bound to the estimated amounts, but should the actual requested amounts tend to vary substantially from the estimates, the Contractor shall revise the schedule and deliver the revised schedule to the Owner.

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§ 9.3.1 At least ~~ten~~37 days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if ~~required,~~required by the Owner, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage ~~if provided for in the Contract Documents of 5% from amounts due, including amounts due for payment of Contractor's Fee and for Work performed by Contractor's own personnel and by Subcontractors.~~

§ 9.3.1.1 ~~As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~Intentionally Deleted

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work ~~for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.~~performed by Subcontractors or provided by material suppliers, unless the Contractor intends to pay the Subcontractors or material suppliers.

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§ 9.3.4 The Contractor may request advance approval by the Owner of payment for materials and equipment stored off-site pursuant to Section 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 in off-site storage and the conditions for payment.
- .2 Notwithstanding any advance approval or anything herein to the contrary, the Owner will not pay for materials or equipment in off-site storage, 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-site, at the start of the Work the Contractor shall submit a proposed list to the Architect for review and concurrence. The list shall include:
 - .a the item;
 - .b the reasons for the off-site storage;
 - .c proposed storage location; and
 - .d anticipated delivery time to the off-site storage.
- .4 To qualify for consideration, the material or equipment shall be at least one of the following:
 - .a a major item;
 - .b specially fabricated or produced for the Work of this Contract and shall be in accordance with the Contract 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 9.3.4 must also be all of the following:
 - .a properly stored and protected, as required by Section 9.3.3, and approved by the Owner, including marking with the Project name;

- b certified by the Contractor, Subcontractor or supplier to be in storage and immediately available (when required);
- c examined by the Architect at the place of storage;
- d furnished at no additional cost or expense to the Owner except the time required to examine the items, unless otherwise authorized by the Owner; and
- e insured to the satisfaction of the Owner.

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§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, ~~that, to the best of the Architect's knowledge, information and belief, the~~ that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. ~~However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~

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

...

- ~~.7 repeated~~ failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, ~~certification will be made for~~ the Architect shall issue a Certificate for Payment for corresponding amounts previously withheld.

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§ 9.5.4 If the Contractor disputes any determination by the Architect with regard to any Certificate for Payment, the Contractor nevertheless shall continue to prosecute the Work expeditiously.

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

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. will make payment within 30 days of receipt of such Certificate, and will so notify the Architect that it has done so.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven ten days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. The Contractor will promptly and publicly post on the work site the listing of paid Applications for Payment to date, pursuant to Minnesota Statutes, Section 137.36. If the Contractor fails to pay a Subcontractor amounts due within ten days of receipt of payment from the Owner, the Contractor shall pay the amount due to that 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.

...

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

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

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

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, Documents, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, 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. In the event the Contractor elects to stop Work under this Section 9.7, upon recommencing the Work, the Contractor may seek a Change Order or assert a Claim for adjustment of the Contract Time and the Contract Sum by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.start-up.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Contractor shall pay costs, if any, incurred by the Owner in connection with the reinspection.

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§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance 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 Contract Documents. The Owner shall have the right to withhold payment of 150% of the value of any Work that is incomplete or not in accordance with the requirements of the Contract Documents, as determined by the Owner in the Owner's discretion, until the Contractor corrects such Work.

...

§ 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 Contractor, stage,~~ provided such occupancy or use is ~~consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor 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 correction of the Work and commencement of warranties required by the Contract Documents.~~ complete. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. ~~Consent of the Contractor 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 Contractor or, if no agreement is reached, by decision of the Architect.~~

...

§ 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 Contract Documents.~~ Work.

...

§ 9.10.1 ~~Upon receipt of the Contractor's~~ The Architect shall promptly make final inspection of the Work upon receipt from the Contractor of (1) written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when (2) a final Application for Payment. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, and the Contractor has delivered to the Owner (1) a bound compilation of all warranties and operation manuals applicable to the Project and (2) a complete set of the documents described in Section 3.1.1, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted

in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation by the Architect that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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 Contract Documents to remain in force after final payment is currently in effect and will ~~not be canceled 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 the Contract Documents, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment and~~ (5), 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 Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor 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 Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. The Contractor's obligations under this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

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

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If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, 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.

...

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a ~~licensed-qualified~~ laboratory to verify the presence or absence of the material or substance reported by the ~~Contractor and, in~~ Contractor. In the event such material or substance is found to be present, ~~to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect 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 Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have 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, remediated as required by applicable law, Work in the affected area shall resume upon written agreement of the Owner and Contractor. resume.~~ By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by ~~law, 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 Contractor, Subcontractors, Architect, Architect'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,~~ expenses arising out of or resulting from performance of the Work in the affected area ~~if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided 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 10.3.1, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~

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

§ 10.3.6 ~~If, Subject to Section 10.3.5, if,~~ without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. Such indemnity obligation shall survive the Owner's acceptance of the Work or termination of the Contract.

...

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

...

§ 11.1.1 The Contractor shall purchase ~~from~~ and maintain ~~in~~ insurance from a company or companies lawfully authorized to do business in the jurisdiction in which the Project is ~~located~~ such insurance as will located. Such insurance shall be sufficient to protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable,

whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

...

- .7 Claims for bodily injury or property damage arising out of completed operations;
~~and~~
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18-3.18;
- .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 Other claims, if any, specifically described in attached Schedule 11.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than the limits of liability specified in attached Schedule 11, the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, Any aggregate limit under the Contractor'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 Contract 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 and termination of any coverage required to be maintained after final payment, or any later date required by the Contract Documents, and, with respect to the Contractor's completed operations coverage, until the later of expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. ~~three years after final payment by the Owner.~~

§ 11.1.3 ~~Certificates of insurance acceptable to the Owner~~ 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 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. ~~of insurance and from time to time on request of the Owner. These certificates and the insurance policies required by this Section 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.~~ 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 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, general aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause ~~the commercial~~ all liability coverage required by the Contract Documents require the Contractor to maintain (other than Employers Liability and Professional Liability Insurance, if any) to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations, operations, and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. Such additional insured coverage shall be primary and any insurance obtained by the Owner or any other additional insured (including self-insurance) shall be excess and noncontributory. The Owner and other additional insureds shall not become responsible for payment of insurance premiums by reason of the naming of the Owner and the others as additional insureds. As an additional insured the Owner and each other additional insured shall have all the rights, coverages, and limits afforded the Contractor 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 Contractor's expense.

§ 11.1.5 The Contractor shall cause all liability coverage the Contract Documents require the Contractor to maintain (other than Employers Liability and 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 Contractor agrees to waive and shall require all Subcontractors and Sub-subcontractors at any tier to waive all subrogation and recovery rights on behalf of themselves and their insurers against the Owner and its employees.

§ 11.1.6 The Contractor may use an Umbrella or Excess Liability insurance policy to supplement the Contractor's policy limit to satisfy the full policy limits required by the 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.

§ 11.1.7 Damages covered by the Contractor's pollution liability insurance 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 the Contractor's operations under the 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 Contractor transported materials. Contractor's pollution liability insurance may be on a claims made basis. Claims-made provisions, if any, must have a retroactive date of policy inception and Contractor shall maintain the specified coverage for a minimum of five years after Substantial Completion.

§ 11.1.8 OTHER CONDITIONS OF CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.8.1 The Contractor 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 Contract if the insurance the Contractor is required to maintain under this Contract is cancelled, non-renewed, reduced in coverage below the level required in this Contract, or an insurance carrier rating is downgraded below an A-VII, and the Contractor fails 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 Contractor).

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

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

§ 11.1.8.4 The Contractor will require its Subcontractors to maintain the same insurance the Contractor is required to maintain (including coverage, endorsements and limits). Alternatively, if approved by Owner in writing, the Contractor may use a Controlled Insurance Program ("CIP"). If the Contractor is permitted by the Owner to use a CIP for the Project, the Contractor shall require its Subcontractors to maintain insurance as outlined in the CIP Requirements and Forms Manual approved by Owner in writing, a copy of which Manual shall be attached to and incorporated into this Contract. Upon request by the Owner, the Contractor shall provide evidence of its Subcontractors' insurance to the Owner, including without limitation, certificates of insurance or certified insurance policies and endorsements.

§ 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 Contractor. The Contractor shall be responsible to pay the full amount of any deductibles or self-insured retentions of any coverages.

§ 11.1.8.6 The Contractor 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 Contractor or any Subcontractor on the Project.

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. maintain the Owner's usual liability insurance. The Owner may in its discretion purchase insurance or self-insure.

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The Owner shall maintain a master "All Risks" Property Insurance Policy (the "All Risks Policy") that insures the interest of the Owner, the Contractor, Subcontractors and Sub-subcontractors at any tier in the Work . Unless otherwise provided in the Contract Documents, the Work under this Contract will be insured under the All Risks Policy, subject to the limits, sublimits and exclusions of such policy and the provisions of the Contract Documents.

§ 11.3.1 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 value of subsequent 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 Contract 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 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. 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 All Risks 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, supplies 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.

§ 11.3.1.1 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 Architect's and Contractor's services and expenses required as a result of such insured loss. The All Risks Policy contains a loss deductible clause, in the amount of \$500,000 for each and every loss occurrence.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto. The Contractor shall be responsible for the first \$500,000

in cost and expenses associated with any direct physical loss or damage to the Work for each and every occurrence.

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. 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.~~

~~§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. The All Risks Policy shall not cover, and neither the Owner nor the Architect shall be responsible for, loss or damage to property of any kind owned or leased by the Contractor, the Subcontractors, the Sub-subcontractors at every tier, or their employees, servants, or agents that is not destined to become a permanent part of the Project.~~

~~§ 11.3.1.5 Partial occupancy or use in accordance with Section 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 Contractor 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.~~ **Intentionally Deleted**

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

~~§ 11.3.3 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 Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~ **Intentionally Deleted**

~~§ 11.3.4 If the Contractor 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 Contractor by appropriate Change Order.~~ **Intentionally Deleted**

~~§ 11.3.5 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 11.3.7 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.~~ **Intentionally Deleted**

~~§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. 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 Contractor.~~ **Intentionally Deleted**

...

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-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 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 Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-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 obligations in this Section 11.3.7 shall survive the Owner's acceptance of the Work or termination of the Contract.

~~§ 11.3.8 A loss insured under the 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~ **REPORTING AND ADJUSTING PROPERTY INSURANCE CLAIMS.** 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 Contractor. The Owner and Contractor shall promptly report all claims to their respective insurance carriers in accordance with the policy conditions.

~~§ 11.3.9 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, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

~~§ 11.3.10 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; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

§ 11.3.8.1 In the event of any loss which is equal to or less than the \$500,000 deductible, the Contractor shall immediately repair, replace, rebuild or otherwise remedy the loss to prevent or minimize delay of the Project.

§ 11.3.8.2 In the event of an loss in excess of the \$500,000 deductible, if no other special agreement is made and unless the Owner terminates the Contract for convenience, the Owner may order the Contractor to replace damaged property by notification of a Change in the Work in accordance with Article 7.

§ 11.3.8.3 The Contractor shall cooperate with the Owner and the insurance adjusters to determine the value of any loss. All losses covered under the Owner's All Risks Policy shall be adjusted by the policy insurers and proceeds from the All Risks Policy shall be payable to the Owner. After the Contractor has received payment on a loss, the Contractor shall pay each Subcontractor a just share of any uninsured loss the Contractor is responsible for, including deductible amounts, and of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to its Sub-subcontractors in similar manner.

§ 11.3.8.4 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.

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond (individually, a "Bond," collectively, the "Bonds") to the Owner. The Performance Bond shall be in an amount equal to 100% of the full amount of the Contract Sum as security for the faithful performance of the Contract Documents, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Contract Sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such Bonds shall be on forms approved by the Owner and shall name the Owner as a primary obligee.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The sureties issuing the Bonds (individually, a "Surety," collectively, "Sureties") shall be satisfactory to the 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 Contractor and the Bonding Agent or Agency.

§ 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 10% of the penal sum. Any aggregate increase in excess of 10% of the original penal sum shall require the Surety's written consent.

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

§ 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 Contractor 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 Contractor shall pay the premiums on such new bond(s). The Contractor shall be entitled to reimbursement of the costs of such substitution as a Change Order increasing the GMP only if the bonds provided by the Contractor meets the requirements of Section 11.4.2 at the time the Owner requests such substitution. The Contractor acknowledges that further payments to Contractor may not be made until the new sureties have been qualified and approved by the Owner.

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

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

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The Contractor shall promptly correct Work rejected by the ~~Architect~~ Architect, the Owner or any governmental authority or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Additionally, the Contractor shall be responsible for and the Owner may collect from the Contractor, or deduct from payments or sums due to the Contractor under this Contract or any other contract between the Owner and the Contractor (1) the reasonable value of the time of all Owner personnel involved in the correction of such rejected Work, (2) the reasonable value of the time of all Owner personnel involved in reinspections of the corrected Work, and (3) compensation for the Architect's services (whether basic or additional) and expenses associated with such re-inspection.

§ 12.2.2.1 In addition to the Contractor's obligations under ~~Section 3.5, Article 3,~~ if, within one year after the date of Substantial Completion of the Work or designated portion thereof ~~thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special~~ thereof, or by terms of an applicable warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, ~~the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition.~~ Owner, the Contractor shall correct the defective Work. The Owner shall give such notice promptly after discovery of the condition. ~~During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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§ 12.2.2.3 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section ~~12.2.12.2~~ 12.2.12.2 for an additional one-year period commencing on the date Owner accepts the corrected Work.

...

§ 12.2.4 The Contractor 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 Contract Documents, (2) all costs incidental to any required redesign by the Architect, 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 Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced ~~as appropriate and equitable~~ 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.

...

The ~~Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4 internal laws of the State of Minnesota shall govern the validity, construction and enforceability of this 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 Contract shall be in the courts of record of the State of Minnesota and venue shall be in Hennepin County.

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§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as ~~provided~~ set forth in Section ~~13.2.2, 5.4,~~ neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Owner may withhold its consent in its sole 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 Contract.

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

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or 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 or by courier service providing proof of delivery 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.

...

§ 13.4.1 ~~Duties~~—Unless specifically stated in the Contract or otherwise agreed to in writing, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, 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 the Contract Documents or imposed or available at law.

§ 13.4.3 If the Owner has the right to collect any amount from the Contractor under this Contract, including a right to an adjustment in the Contract Sum, that right shall include the right to deduct any amount due from payments due the Contractor under this Contract and, if payments due the Contractor under this Contract are not sufficient to cover such amounts, or if Owner has made final payment, the Owner may set off the amount due against any account or agreement with the Contractor and may bring legal action to collect the amount due.

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§ 13.5.1 ~~Tests~~—The Contractor shall coordinate, schedule and provide safe access for tests, inspections and approvals of portions of the Work ~~shall to~~ be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make prompt arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, ~~or~~ and, if applicable, with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. ~~The~~ Except to the extent required due to the failure of the Contractor to perform the Work in accordance with the Contract Documents, the Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. In no event shall any interest be due and payable by the Owner to the Contractor, any Subcontractor or any other party on any of the sums which the Owner is authorized to retain pursuant to the Contract Documents.~~

...

~~The Owner and Contractor 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 the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7. law.~~

...

- ~~.1 Issuance of an order of a court or other public authority having jurisdiction through no fault of the Contractor that requires all Work to be stopped;~~
- ~~.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or~~
- ~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- ~~.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1. Documents.~~

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

~~§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ~~seven~~ 14 days' written notice to the Owner and ~~Architect~~, Architect (given after the Work has been stopped for 30 consecutive days), terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and ~~profit~~, profit on completed Work (but not overhead or anticipated profit for Work not yet executed), costs incurred by reason of such termination, and damages.~~

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

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- ~~.1 repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

- ...
- ~~.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~
 - ~~.4 otherwise is guilty of substantial breach of~~ 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 Contractor's assets or otherwise is or becomes insolvent;
 - .5 fails to maintain schedules as required by the Contract Documents;
 - .6 fails to perform the Work in accordance with the Contract Documents;
 - .7 makes a false statement in the Compliance Certificate (University Document 00900) and/or supplemental verification verifying compliance with Minn. Stat. § 16C.285, Subd. 3 (if applicable); or
 - .8 otherwise substantially breaches a provision of the Contract Documents.
- ...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall promptly pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract, and include the right of set off by the Owner against any account or agreement with the Contractor.

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

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§ 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 14.3.1.~~ interruption. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on ~~the Work not executed.~~ completed Work (but not overhead or anticipated profit for Work not yet executed).

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At the next Project meeting following delivery of the notice of a Claim, or such earlier date as the parties may agree, the Owner and the Contractor shall attempt to resolve such Claim through discussions between their respective representatives. The Owner may require the Architect to participate in such discussions. If a Claim is not resolved through discussions between the representatives of the Owner and the Contractor within 30 days after the initial meeting, then either party may proceed with mediation pursuant to Section 15.3.1, subject to the Owner's right to require an Initial Decision, pursuant to Section 15.2. The terms of this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the ~~Initial Decision Maker~~ Owner.

...

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this 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 Contractor 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 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

~~§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall~~ Claims not resolved at the initial meeting under Section 15.1.2, excluding those arising under Sections 10.3 and 10.4 may, in the Owner's discretion, be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. ~~Except for those Claims excluded by this Section 15.2.1, If the Owner elects to refer a Claim to the Initial Decision Maker,~~ an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing;~~ writing, (2) state the reasons therefor; therefor, and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to ~~binding dispute resolution;~~ litigation.

...

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue ~~binding dispute resolution proceedings~~ litigation with respect to the initial decision.

...

§ 15.2.8 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.

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections ~~9.10.4, 9.10.5, and 15.1.6~~ 9.10.4 and 9.10.5 shall be subject to mediation as a condition precedent to ~~binding dispute resolution~~ litigation. The terms of this Section shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures~~ conducted in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of ~~binding dispute resolution~~ a complaint in litigated proceedings but, in such event, mediation shall proceed in advance of ~~binding dispute resolution 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. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 15.3.3 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.

ARTICLE 16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

§ 16.1 The Contractor shall not discriminate against Subcontractors, or employees, or applicants for employment 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 Contractor shall ensure that Subcontractors do not discriminate against employees, Sub-subcontractors or applicants for employment or Sub-subcontracting because of membership in any Protected Class.

§ 16.2 The Contractor 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 16.1.

§ 16.3 For contracts and/or subcontracts exceeding \$100,000, the Contractor 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 Contract. The Contractor shall 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 Contract.

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

§ 16.5 Before commencing the Work, the Contractor 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.

§ 16.6 The Contractor 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 Contractor shall make maximum use of apprentices to develop qualified minority and female personnel. The Contractor shall seek to fill labor shortages for apprentices and skilled journeymen by upgrading present employees including qualified minority and female employees.

§ 16.7 The Contractor 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 16. The Contractor shall permit access to its books, records, and accounts by the Owner for the purpose of ascertaining compliance with these provisions.

§ 16.8 Noncompliance with any equal employment provision of the Contract shall be a material default under the Contract, which the Contractor 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 Contract amount. The Owner and the Contractor acknowledge and agree that the actual extent of losses the Owner will incur as a result of the failure of the Contractor to comply with the equal employment provision of the Contract cannot reasonably be determined as of the date of this Contract, and the liquidated damages amount is reasonable under the circumstances and not a penalty.

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

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

ARTICLE 17 MINIMUM WAGE RATES

§ 17.1 In accordance with Owner's policy, the Contractor, 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 on the site at least the Prevailing Wage Rate applicable to their respective class of labor in the county in which the Project is located.

§ 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 Contractor is responsible for compliance by all Firms.

§ 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.

§ 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.

§ 17.5 The term "Prevailing Hours of Labor" refers to the number of hours of labor per day and per week for 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 Contractor 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.

§ 17.6 At the Owner's request, Firms shall furnish to the Contracting Agent 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.

§ 17.7 "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>.

§ 17.8 "Contracting Agent" refers to the Owner's representative.

§ 17.9 If the Owner becomes aware that Firms are not paying Prevailing Wage Rates or paying time and one-half rates for hours exceeding Prevailing Hours of Labor, it will consider such non-compliance a material breach of the Contract. The Contractor 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, Contractor shall immediately pay Owner the total amount of the underpayment of wages plus 5%. The Owner and the Contractor acknowledge and agree that the actual extent of Owner 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.

§ 17.10 The Contractor shall hold the Owner harmless, defend (with counsel reasonably acceptable to the Owner) and indemnify the Owner 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 Contractor's obligations under this Section 17.10 shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 17.11 By requiring the Contractor to pay the wages under subparagraph Sections 17.1 and 17.2 or to pay any other minimum wage rates, neither the Owner nor the Architect represent

that labor may be employed at the minimum hourly wage. The Contractor 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.

§ 17.12 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 Contractor 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 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 Contractor shall obtain the proper rate from the Department. If necessary, the Contractor shall assist in obtaining a decision or clarification on incorrect or missing rates.

§ 17.13 If the Contractor or Subcontractor at any tier fails to pay any of its laborers or mechanics prevailing wages as provided herein, such 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 reasonably acceptable to the Owner) and hold the Owner harmless for 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 Contractor or Subcontractor that said Contractor's or Subcontractor's failure to so pay prevailing wages results from the intentional misconduct or gross negligence of such Contractor or Subcontractor, then the Contractor shall be liable to and pay to the Owner (or the Owner may withhold from payments owed to the Contractor), as liquidated damages, a sum equal to 5% of the unpaid wages. The Owner and the Contractor acknowledge and agree that the actual extent of Owner losses the Owner will incur as a result of the failure of the Contractor or any subcontractor to pay prevailing wages cannot reasonably be determined as of the date of this Contract, and the liquidated damages amount does not constitute a penalty but is reasonable under the circumstances and shall be in addition to but not limit on any rights and remedies otherwise available to the Owner. The Contractor's obligations under this Section 17.13 shall survive the Owner's acceptance of the Work or termination of this Contract.

§ 15.4 ARBITRATION

ARTICLE 18 PROHIBITION AGAINST GRATUITIES

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. 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.

§ 18.1 ACCEPTANCE OF ADVANTAGE

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

§ 15.4.1.1 A demand for arbitration shall 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 the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 18.1.2 The Contractor agrees that its participation with any employee of the Owner in acts that violate Minnesota Statutes, Section 15.43 constitutes a material default under this Agreement entitling the Owner to terminate for cause, pursuant to Section 14.2.

§ 15.4.2 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.

§ 18.1.3 By signing the proposal for this Project and by signing the Contract Documents, the Contractor certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially or materially from this Contract.

ARTICLE 19 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT, AND SMALL BUSINESS PROGRAM

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

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

ARTICLE 20 USE OF NAME OR LOGO

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

§ 15.4.4 CONSOLIDATION OR JOINDER

ARTICLE 21 MINNESOTA GOVERNMENT DATA PRACTICES ACT AND CONFIDENTIAL INFORMATION

§ 21.1 The Contractor shall comply with Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") with regard to any information the Owner provides to the Contractor that is subject to the Act. The Contractor 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 Contractor shall return any documents or other information the Owner has supplied to the Contractor 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.

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.2 The Contractor shall not use or disclose and shall not permit others to use or disclose Confidential Information without the Owner's prior written approval. The Contractor 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 Contractor's obligations under this Section 21 and (2) the Contractor has provided the original written agreement to the Owner.

§ 21.3 The term "Confidential Information" means all Owner knowledge, information, data, materials, and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Contractor and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that the Contractor can show (by contemporaneous written records) that the Contractor had it in its possession before beginning the Project and before disclosure by the Owner.

~~§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. 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.~~

§ 21.4 The Contractor agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section 21. The Contractor agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section 21.

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

§ 21.6 The Contractor's obligations under this Section 21 shall survive the Owner's acceptance of the Work or termination of this Contract.

ARTICLE 22 AUDIT

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

§ 22.2 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 Contractor'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 Contract. In those situations where Contractor's Records have been generated from computerized data, the Contractor agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

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

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

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

§ 22.6 If an Audit discloses overpricing or overcharges (of any nature) by the Contractor 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 Contractor. 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 Contractor.

ARTICLE 23 NO-STRIKE PROVISION

If the Contractor provides unionized labor, then the Contractor shall have in effect throughout the performance of this 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 Contractor shall require Subcontractors at any tier to include the same requirements in any collective bargaining agreements to which they are a party. The Contractor shall be liable for all direct and consequential damages attributable to any delay caused by the failure of the Contractor to include, or require its Subcontractors to include, such requirements in such collective bargaining agreements.

SCHEDULE 11 CONTRACTOR INSURANCE REQUIREMENTS

General Liability*

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

Including the following coverages:

Premises and Operations – Bodily Injury and Property Damage

Products and Completed Operations – Bodily Injury and Property Damage

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Personal Injury and Advertising Injury

Contractual Liability as provided in ISO form CG 00 01 12 04 **

Pollution exclusion with standard exception per ISO form CG 00 01 12 04 **

Waiver of Subrogation in favor of the Owner

Additional Insureds for ongoing and completed operations on
ISO forms CG 2010 07 04 and CG 2037 07 04 **

Automobile Liability*

Combined Single Limit – Bodily Injury/Property Damage \$5,000,000
Owned, hired and non-owned automobiles.

Additional Insureds endorsement on ISO form CA 2048 02 99 **

Waiver of Subrogation in favor of the Owner

Worker’s Compensation

Statutory

a. Coverage B – Employers’ Liability as described below

b. Coverage C: All States Coverage

c. If applicable, USL&H and Voluntary Compensation

Employer’s Liability*

Each Accident \$5,000,000

Disease - Policy Limit \$5,000,000

Disease - Each Employee \$5,000,000

Contractor’s Pollution Liability

Each Occurrence or Claim \$2,000,000

Aggregate \$2,000,000

Builder’s Risk

Coverage of University Deductible \$500,000

Professional Liability (Errors and Omissions)

Each Occurrence or Claim \$2,000,000

Aggregate \$2,000,000

The Contractor is required to maintain professional liability coverage only if the Contractor is providing construction management or professional design services. Professional Liability coverage may be on a claims-made basis. The policy will have a retroactive date before the start of the Work and will remain in effect for not less than five years after Substantial Completion.

* Contractor may use an Umbrella/Excess policy to provide or supplement the full policy limit.

** Or equivalent as approved by the Owner.

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Eric M. Stern, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:25:49 on 07/06/2015 under Order No. 1904020915_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)