AIA® Document B102™ – 2007

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BY AND BETWEEN

The Owner:
(Name, address and other information)

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

Through its Project Manager:

University of Minnesota
400 Donhowe Building
319 15th Avenue SE
Minneapolis, MN 55455
Phone: (612) 62
Fax: (612) 625-0770
E-Mail: @umn.edu

and the Architect/Engineer/Consultant (the "Architect"):
The word Architect is used universally herein to identify the organization named on page one of the Agreement.

(Name, legal status, address and other information)

Firm
Address
City

Contact

Name
Phone:
Fax:
E-Mail:

for the following Project:
(Name, location and detailed description)

University of Minnesota Project Name:

University of Minnesota Project No.:

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

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

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Project Description:

For projects requiring non-design consulting services or predesign services.

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The Owner and Architect agree as follows.

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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:
(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 10.2)

As described in the Architect's Proposal as accepted by the Owner and attached to and incorporated in this Agreement.

§ 1.2 The Architect shall perform its services with a standard of care consistent with the professional skill and care ordinarily provided by sophisticated architects with experience in projects similar to the Project practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services promptly and expeditiously as is consistent with the Architect's standard of care and the orderly progress of the Project.

§ 1.3 The Architect's services to be performed under this Agreement shall commence on the date set forth on page 1 of this Agreement and, subject to modification authorized by the Owner, Substantial Completion shall be achieved on or before_____, 20_. Time is of the essence of this Agreement.

§ 1.4 The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations and codes and the Owner's Standard and Procedures for Construction and Exterior Design Standards current as of the date of this Agreement as published on the Owner's website (www.cpm.umn.edu).
§ 1.5 The Architect shall
(Paragraphs deleted)
identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 1.6 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.7 The Architect shall promptly review information provided by the Owner, correlate its review with information obtained by the Architect from other sources, and promptly report to the Owner errors, inconsistencies or omissions discovered or made known to the Architect.

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§ 1.8 The Architect 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. The Architect shall cooperate with the Owner to prepare such additional reports as required by the Owner.

§ 1.9 The Architect shall, at its sole cost and expense, maintain the following insurance for the duration of this Agreement and for a period of at least three years after the date of Substantial Completion or earlier termination of this Agreement, with insurers having an A.M. Best rating of A-VII or better and licensed to do business in the State of Minnesota:

.1 General Liability (including contractual liability)

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

.2 Automobile Liability

$2,000,000 Bodily Injury/Property Damage (per accident or loss for owned, non-owned and hired vehicles)
Statutory Personal Injury Protection

.3 Worker's Compensation

Statutory coverage limits for Minnesota and All States Endorsement

.4 Professional Liability

$1,000,000 per claim and $2,000,000 aggregate

.5 Employer's Liability

$50,000 Each Accident
$500,000 Disease - Policy limit
$500,000 Disease - Each Employee

.6 Valuable Papers. The Architect must purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed and electronic documents on an all-risk basis in an amount sufficient to cover the cost of research, re-creation or reconstruction of valuable papers or records related to the Project.

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

§ 1.9.1 The Architect shall require each structural, mechanical, electrical, civil and other professional engineer, landscape architect, and other design consultant (if any) to maintain professional liability insurance with a $1,000,000 per claim coverage limit and a $2,000,000 aggregate coverage limit.

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§ 1.9.2 The Architect shall deliver to the Owner certificates, or at the request of the Owner certified copies, of the policies evidencing the insurance required by Sections 1.9 and 1.9.1, before the commencement of the Architect's services and from time to time at the request of the Owner for as long as the Architect is required to maintain such insurance. Each policy shall (1) require the insurer to notify the Owner at least 30 days before any cancellation, nonrenewal or material modification of the policy, and (2) waive all rights of subrogation against the Owner, the Contractor, and their officers, employees, contractors and subcontractors. Each policy, except professional liability and worker's compensation Schedule A, shall name the Owner as an additional insured, with such coverage being primary and non-contributory with respect to any insurance carried by the Owner (including any self-insurance by the Owner).

§ 1.9.3 The professional liability insurance for the Architect and each engineer and other consultant may be written on a claims-made basis with a retroactive date of no later than the date that the Architect, engineer, or consultant first performed services in regard to the Project.

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Architect shall be entitled to rely on the accuracy and completeness thereof, provided such reliance shall be reasonable based on the Architect's standard of care. The Owner shall have no responsibility for determining which services, information, surveys, and reports are required for the Project and the Architect shall be solely responsible for identifying and requesting such items.

§ 2.2 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Architect shall not take direction from or act upon requests for modifications or changes in its services by anyone other than the Owner's designated representative. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delays in the orderly and sequential progress of the Architect's services.

(Paragraphs deleted)

ARTICLE 3 USE OF ARCHITECT'S DOCUMENTS

§ 3.1 The Owner shall be deemed the owner of the instruments of service prepared by the Architect and the Architect's consultants, including the drawings and specifications, and shall have all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed or this Agreement is terminated before or after the instruments of service are complete. Submission or distribution of instruments of service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights of the Owner.

§ 3.2 Without limiting the generality of Section 3.1, the Owner may use the instruments of service for maintenance, planning, renovations of and additions to the Project, and the Owner may permit qualified professionals to reproduce all or portions of the instruments of service (including the design embodied in those instruments of service) for incorporation into instruments of service to be prepared by such other qualified professionals for renovations of or additions to the Project or other projects for the Owner if those professionals assume all responsibility for the

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resulting instruments of service and remove all references to the Architect and the Architect's consultants from the resulting instruments of service.

§ 3.2.1 In the event the Owner uses the instruments of service without retaining the author of the instruments of service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the instruments of service under this Section 3.2.1. The terms of this Section 3.2.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.2.

§ 3.3 After termination of this Agreement for cause or convenience, and payment to the Architect of amounts due under this Agreement, if any, the Architect shall deliver to the Owner a complete set for prints and electronic copies of the instruments of service, as completed through the date of termination.

(Paragraph deleted)

§ 3.4 Notwithstanding anything to the contrary in this Agreement, the Architect and its consultants shall have the right to retain a copy and use the instruments of service for any lawful purpose, including without limitation use of elements of the design on other projects, provided that the Architect shall be responsible for the consequences of such use.

(Paragraphs deleted)

§ 3.5 All electronic copies of drawings that the Architect is required to deliver pursuant to this Agreement shall be in a format acceptable to the Owner.

ARTICLE 4 MEDIATION; LITIGATION

§ 4.1 The Owner and the Architect shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith. If negotiation fails to resolve a Dispute within 30 days after receipt of notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation. The Architect's obligations under this Section 4.1 shall survive completion of services or termination of this Agreement.

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

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

(Paragraphs deleted)

§ 4.4 If the parties do not resolve a Dispute through mediation pursuant to this Article 4, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in Hennepin County, Minnesota.

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ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 If the Owner fails to make payment when due the Architect for services and expenses in accordance with this Agreement, the Architect may, upon 30 days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within 30 days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services due to the Owner's failure to make payment, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by the Architect was otherwise not warranted.

§ 5.2 Either party may terminate this Agreement upon not less than 30 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.3 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 5.4 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. The Architect shall not be entitled to anticipated profits.

(Paragraphs deleted)

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 10.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

<< Chose One Option>>

Using the Architect's hourly rate schedule attached hereto, which includes Direct Personnel Expenses (as defined in Section 6.4.2), provided such total shall not exceed $_____.

On the basis of a lump-sum in the amount of $_____.

§ 6.2 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 6.2.1 Reimbursable Expenses are in addition to the Architect's compensation for services performed and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project for:

- **.1** Owner-authorized out-of-town travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to employees of the Owner, as posted at https://policy.umn.edu/finance/travel-appp;
- **.2** reasonable long-distance telephone services, dedicated data and communication services, teleconferences, Project web sites and extranets;
- **.3** Owner requested printing, reproductions, plots, standard form documents;

(Paragraph deleted)

- **.4** reasonable postage, handling and delivery of documents for bidding purposes, Owner review(s), or other specially mandated or required review(s) or as otherwise requested by the Owner;
- **.5** renderings, models, mock-ups, and professional photography requested by the Owner;

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(Paragraph deleted)

.6 Owner authorized special computer studies, videos or cds; or Owner authorized special reports required by any unique characteristic of the Project; and

(Paragraph deleted)

.7 reproduction of record drawings (if applicable to the Project).

§ 6.2.2 FOR REIMBURSABLE EXPENSES, the compensation shall be the actual expenses incurred by the Architect and the Architect's consultants directly related to the Project, without mark-up.

(Paragraphs deleted)

§ 6.2.3 The not-to-exceed compensation amount for Reimbursable Expenses <<[is included in the compensation established in Section 6.1] or [shall be ($_____)]>>, subject to the limitations of Section 6.2.1.

§ 6.3Intentionally Deleted

§ 6.4 PAYMENTS TO THE ARCHITECT

§ 6.4.1 Intentionally Deleted

§ 6.4.2

(Paragraphs deleted)

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

§ 6.4.3 Payments are due and payable 30 days after receipt of the Architect's invoice.

§ 6.4.4 IF THE SCOPE of the Project or of the Architect's services is changed materially, the amounts of compensation shall be equitably adjusted.

§ 6.4.5 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative pursuant to Section 9.1.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by and interpreted under the internal laws of the State of Minnesota without giving effect to conflict of law principles. All suits, actions, and causes of action relating to the construction, validity, performance or enforcement of this Agreement shall be in the courts of record in the State of Minnesota and venue shall be in Hennepin County.

§ 7.2 The Owner and the Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other party arising out of or related to this Agreement within the time period specified by applicable law.

§ 7.3 Except to the extent expressly defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 7.4 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither Owner nor the Architect shall assign this Agreement without the written consent of the other.

§ 7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 7.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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§ 7.7 Project Management Information System

(Paragraph deleted)

§ 7.7.1 The Owner may, at it sole option, direct the Architect and/or other Project participants to utilize the Owner's internet-based Project Management Software. The functionality of this software may include, but is not limited to, the processing of Plan Reviews, Purchase Orders, Change Orders, Invoices, Payment Applications, Requests for Information, and Document Management related to the Project.

§ 7.7.2 If the Owner chooses to utilize its Project Management Software for the Project, the Owner will provide and manage a login license for the Architect's designated Project representative(s) at no cost to the Architect. The Owner will provide initial software training to the Architect's designated Project representative(s) at no cost to the Architect. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of this software by the Architect.

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 9 OTHER CONDITIONS

§ 9.1 AUDIT RIGHTS.

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

§ 9.1.2 The Architect 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 Architect shall retain all such Records until the Claim has been resolved.

§ 9.1.3 The Architect shall require all payees to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the Architect and the payee.

§ 9.1.4 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

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

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

§ 9.2 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. The Architect shall not discriminate against employees, consultants, or applicants for employment or consulting, 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 Architect shall ensure that its consultants do not discriminate against employees or applicants for employment because of membership in any Protected Class. The Architect agrees to put in conspicuous places, available to employees and applicants for employment, notices to be furnished by the Owner setting forth the nondiscrimination provisions of this Section 9.2. If the compensation expected to be paid to the Architect exceeds $50,000, the Architect shall designate an Equal Employment Opportunity Officer, who shall have authority and responsibility for implementation of equal opportunity employment and affirmative action programs under this Agreement. The Architect 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 this Agreement. In all solicitations and advertisements for employees and consultants placed by or on behalf of the Architect, the Architect shall state that all qualified applicants will receive consideration for employment without regard to membership in a Protected Class. The Architect shall 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 Section 9.2. The Architect shall permit access to its books, records, and accounts by the Owner for the purpose of ascertaining compliance with these provisions. Noncompliance with any equal employment provision of this Agreement shall be a material default under this Agreement, which the Architect 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 Architect's fee as set forth in Section 6.1. The Owner and the Architect acknowledge and agree that the actual extent of Owner losses the Owner will incur as a result of the failure of the Architect to comply with the equal employment provisions of this Agreement cannot reasonably be determined as of the date of this Agreement and the liquidated damages amount is reasonable under the circumstances and not a penalty. The Architect shall take action necessary to enforce these provisions.

§ 9.3 PROHIBITION AGAINST GRATUITIES; ACCEPTANCE AGAINST ADVANTAGE. The Architect acknowledges having read and understood Minnesota Statutes, Section 15.43, which is incorporated herein by reference as if fully set forth herein. The Architect agrees that is 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 5.2. By executing this Agreement, the Architect certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially from this Agreement.

§ 9.4 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT AND SMALL BUSINESS PROGRAM. The Architect 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.pdf. The Architect acknowledges that it has a copy of this policy. As a material consideration for the Owner entering

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into this Agreement, the Architect 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 t Architec agrees that it will fulfill the commitments with regard to the TBE Programs set forth in the Architect's Proposal and upon the Owner's request, provide substantiation of compliance.

§ 9.5 MINNESOTA GOVERNMENT DATA PRACTICES ACT. The Architect shall comply with the Minnesota Governmental Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") with regard to any information the Owner provides to the Architect that is subject to the Act. The Architect 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 Architect shall return any documents or other information the Owner has supplied to the Architect in connection with the services rendered under this Agreement, within 15 days after the completion of services, or upon request by the Owner, whichever occurs first.

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

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

§ 9.6.2 The Architect agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section 9.6. The Architect agrees that the Owner may obtain an injunction to prevent or enjoin any breach of this obligations of this Section 9.6. The Architect's obligations under this Section 9.6 shall survive completion of services or termination of this Agreement.

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

§ 9.7 PAYMENT OF ARCHITECT'S CONSULTANTS. In the event the Architect engages any consultant to perform any of the services under this Agreement, the Architect shall pay any such consultant within ten days (or such shorter period as required by law) of the Architect's receipt of payment from the Owner for undisputed services provided by the consultant. The Architect shall pay interest of 1.5% per month (or any part of a month) to the consultant on an undisputed amount not paid on time to the consultant. The minimum monthly interest penalty for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Architect shall pay the actual penalty due to the consultant. See Minnesota Statutes, Section 137.36.

§ 9.8 AMERICANS WITH DISABILITIES ACT GUIDELINES. The Architect shall design the Project in compliance with the current understanding and interpretation of the Americans with Disabilities Act Guidelines. Appendix A to the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 through 12213 and with adherence to any governing bodies having jurisdiction regarding access to the Project by the physically handicapped.

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§ 9.9 NOTICES. All notices shall be sent to the Project Manager and designed 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.

§ 9.10 BUSINESS DAY. "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.

§ 9.11 INTELLECTUAL PROPERTY. The Architect warrants that any design, materials or products provided or produced by it or its consultants utilized in any manner in the performance of its services will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any intellectual property infringement claim by any third party against the Owner, the Architect, at its expense, shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless the Owner against any loss, cost, expense, or liability (including attorneys' fees) arising out of such claim, whether or not such claim is successful against the Owner. If any such claim occurs, or in the Architect's opinion is likely to occur, the Architect shall either procure for the Owner the right to continue using the design material or product that is the subject of the claim or replace or modify the design materials or products. This remedy is in addition to, and shall not be exclusive of, other remedies provided by law. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

§ 9.12 INDEMNITY. To the extent allowed by law, the Architect shall indemnify, defend (with counsel acceptable to the Owner), and hold harmless the Owner from and against all damages, losses and claims, including but not limited to attorneys' fees, arising in whole or in part out of the negligence, error, omission, or failure of performance by the Architect, its employees, agents, or consultants, or the breach of this Agreement or any implied covenants deemed to be applied thereto by the Architect or its employees, agents or consultants. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

ARTICLE 10 SCOPE OF THE AGREEMENT

§ 10.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 10.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B102–2007, Standard Form Agreement Between Owner and Architect

.2 Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

Owner's Request for Proposal, dated_____.
Architect's Proposal/Quality Control Plan, dated_____.

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This Agreement entered into as of the day and year first written on page 1 of this Agreement.

OWNER	ARCHITECT
Regents of the University of Minnesota	
(Signature)	*(Signature)*
(Printed name and title)	*(Printed name and title)*

(Table deleted)(Paragraphs deleted)

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AIA® Document B102™ – 2007

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

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PAGE 1

~~**BETWEEN** the~~ **BY AND BETWEEN**

The Owner:
(Name, ~~legal status, address and other information)~~address and other information)

Regents of the University of Minnesota
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, MN 55455
Through its Project Manager:

University of Minnesota
400 Donhowe Building
319 15th Avenue SE
Minneapolis, MN 55455
~~and the Architect:~~Phone: (612) 62
Fax: (612) 625-0770
E-Mail: @umn.edu

and the Architect/Engineer/Consultant (the "Architect"):
The word Architect is used universally herein to identify the organization named on page one of the Agreement.

...

Firm
Address
City

Contact

Name
Phone:
Fax:
E-Mail:

...

(Name, location and detailed description)

University of Minnesota Project Name:

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University of Minnesota Project No.:

Project Description:

For projects requiring non-design consulting services or predesign services.

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The Owner and Architect agree as follows.

PAGE 3

3 ~~**COPYRIGHTS AND LICENSES**~~
USE OF ARCHITECT'S DOCUMENTS
4 ~~**CLAIMS AND DISPUTES**~~**MEDIATION; LITIGATION**

...

~~**9**~~ ~~9 OTHER CONDITIONS~~**10 SCOPE OF THE AGREEMENT**

...

(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section ~~9.2)~~ 10.2)
As described in the Architect's Proposal as accepted by the Owner and attached to and incorporated in this Agreement.

§ 1.2 The Architect shall perform its services with a standard of care consistent with the professional skill and care ordinarily provided by sophisticated architects with experience in projects similar to the Project practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services ~~as~~ promptly and expeditiously as is consistent with ~~such professional skill and~~ the Architect's standard of care and the orderly progress of the Project.

§ 1.3 The ~~Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.~~Architect's services to be performed under this Agreement shall commence on the date set forth on page 1 of this Agreement and, subject to modification authorized by the Owner, Substantial Completion shall be achieved on or before _____, 20 . Time is of the essence of this Agreement.

§ 1.4 ~~Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.~~
The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations and codes and the Owner's Standard and Procedures for Construction and Exterior Design Standards current as of the date of this Agreement as published on the Owner's website (www.cpm.umn.edu).
§ 1.5 The Architect shall ~~maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:~~
~~*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*~~

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~~.1 General Liability~~

~~.2 Automobile Liability~~

~~.3 Workers' Compensation~~

~~.4 Professional Liability~~

identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 1.6 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.7 The Architect shall promptly review information provided by the Owner, correlate its review with information obtained by the Architect from other sources, and promptly report to the Owner errors, inconsistencies or omissions discovered or made known to the Architect.

§ 1.8 The Architect 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. The Architect shall cooperate with the Owner to prepare such additional reports as required by the Owner.

§ 1.9 The Architect shall, at its sole cost and expense, maintain the following insurance for the duration of this Agreement and for a period of at least three years after the date of Substantial Completion or earlier termination of this Agreement, with insurers having an A.M. Best rating of A-VII or better and licensed to do business in the State of Minnesota:

.1 General Liability (including contractual liability)

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

.2 Automobile Liability

$2,000,000 Bodily Injury/Property Damage (per accident or loss for owned, non-owned and hired vehicles)
Statutory Personal Injury Protection

.3 Worker's Compensation

Statutory coverage limits for Minnesota and All States Endorsement

.4 Professional Liability

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$1,000,000 per claim and $2,000,000 aggregate

.5 Employer's Liability

$50,000 Each Accident
$500,000 Disease - Policy limit
$500,000 Disease - Each Employee

.6 Valuable Papers. The Architect must purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed and electronic documents on an all-risk basis in an amount sufficient to cover the cost of research, re-creation or reconstruction of valuable papers or records related to the Project.

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

§ 1.9.1 The Architect shall require each structural, mechanical, electrical, civil and other professional engineer, landscape architect, and other design consultant (if any) to maintain professional liability insurance with a $1,000,000 per claim coverage limit and a $2,000,000 aggregate coverage limit.

§ 1.9.2 The Architect shall deliver to the Owner certificates, or at the request of the Owner certified copies, of the policies evidencing the insurance required by Sections 1.9 and 1.9.1, before the commencement of the Architect's services and from time to time at the request of the Owner for as long as the Architect is required to maintain such insurance. Each policy shall (1) require the insurer to notify the Owner at least 30 days before any cancellation, nonrenewal or material modification of the policy, and (2) waive all rights of subrogation against the Owner, the Contractor, and their officers, employees, contractors and subcontractors. Each policy, except professional liability and worker's compensation Schedule A, shall name the Owner as an additional insured, with such coverage being primary and non-contributory with respect to any insurance carried by the Owner (including any self-insurance by the Owner).

§ 1.9.3 The professional liability insurance for the Architect and each engineer and other consultant may be written on a claims-made basis with a retroactive date of no later than the date that the Architect, engineer, or consultant first performed services in regard to the Project.

§ 2.1 ~~Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.~~ The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Architect shall be entitled to rely on the accuracy and completeness thereof, provided such reliance shall be reasonable based on the Architect's standard of care. The Owner shall have no responsibility for determining which services, information, surveys, and reports are required for the Project and the Architect shall be solely responsible for identifying and requesting such items.

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§ 2.2 The Owner shall ~~identify~~ designate a representative authorized to act on the Owner's behalf with respect to the Project. The Architect shall not take direction from or act upon requests for modifications or changes in its services by anyone other than the Owner's designated representative. The Owner or such authorized representative shall render decisions ~~and approve the Architect's submittals~~ in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable ~~delay~~ delays in the orderly and sequential progress of the Architect's services.

~~**§ 2.3** The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.~~

~~**§ 2.4** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~

~~**§ 2.5** The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.~~

~~**ARTICLE 3 COPYRIGHTS AND LICENSES**~~

ARTICLE 3 USE OF ARCHITECT'S DOCUMENTS

§ 3.1 The ~~Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect 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.~~Owner shall be deemed the owner of the instruments of service prepared by the Architect and the Architect's consultants, including the drawings and specifications, and shall have all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed or this Agreement is terminated before or after the instruments of service are complete. Submission or distribution of instruments of service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights of the Owner.

§ 3.2 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.~~Without limiting the generality of Section 3.1, the Owner may use the instruments of service for maintenance, planning, renovations of and additions to the Project, and the Owner may permit qualified professionals to reproduce all or portions of the instruments of service (including the design embodied in those instruments of service) for incorporation into instruments of service to be prepared by such other qualified professionals for renovations of or additions to the Project or other projects for the Owner if those professionals assume all responsibility for the resulting instruments of service and remove all references to the Architect and the Architect's consultants from the resulting instruments of service.

§ 3.2.1 In the event the Owner uses the instruments of service without retaining the author of the instruments of service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the

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instruments of service under this Section 3.2.1. The terms of this Section 3.2.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.2.

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.After termination of this Agreement for cause or convenience, and payment to the Architect of amounts due under this Agreement, if any, the Architect shall deliver to the Owner a complete set for prints and electronic copies of the instruments of service, as completed through the date of termination.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.Notwithstanding anything to the contrary in this Agreement, the Architect and its consultants shall have the right to retain a copy and use the instruments of service for any lawful purpose, including without limitation use of elements of the design on other projects, provided that the Architect shall be responsible for the consequences of such use.

ARTICLE 4 CLAIMS AND DISPUTES

§ 4.1 GENERAL

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the 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 Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction, if applicable. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 4.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.

§ 4.2 MEDIATION

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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~~**§ 4.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them 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 in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~**§ 4.2.3** 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~**§ 4.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:~~
~~*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*~~

~~[ ] Arbitration pursuant to Section 4.3 of this Agreement~~

~~[ ] Litigation in a court of competent jurisdiction~~

~~[ ] Other *(Specify)*~~

§ 3.5 All electronic copies of drawings that the Architect is required to deliver pursuant to this Agreement shall be in a format acceptable to the Owner.

ARTICLE 4 MEDIATION; LITIGATION

§ 4.1 The Owner and the Architect shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith. If negotiation fails to resolve a Dispute within 30 days after receipt of notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation. The Architect's obligations under this Section 4.1 shall survive completion of services or termination of this Agreement.

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

§ 4.3 ~~ARBITRATION~~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.

~~**§ 4.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by~~

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~~the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~**§ 4.3.1.1** 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, dispute or other matter in question 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, dispute or other matter in question.~~

~~**§ 4.3.2** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 4.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 4.3.4 CONSOLIDATION OR JOINDER**~~
~~**§ 4.3.4.1** 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).~~

~~**§ 4.3.4.2** 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.~~

~~**§ 4.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

§ 4.4 If the parties do not resolve a Dispute through mediation pursuant to this Article 4, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in Hennepin County, Minnesota.

§ 5.1 If the Owner fails to make ~~payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of~~ payment when due the Architect for services and expenses in accordance with this Agreement, the Architect may, upon 30 days' written notice to the Owner, suspend performance of services under this Agreement. ~~If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services.~~ Unless payment in full is received by the Architect within 30 days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of ~~services,~~ services due to the Owner's failure to make payment, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of ~~services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by the Architect was otherwise not warranted.

§ 5.2 ~~If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time~~

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~~schedules shall be equitably adjusted.~~Either party may terminate this Agreement upon not less than 30 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the ~~Architect, the Architect may terminate this Agreement by giving~~ The Owner may terminate this Agreement upon not less than seven days' written ~~notice.~~ notice to the Architect for the Owner's convenience and without cause.

§ 5.4 ~~Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.~~In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. The Architect shall not be entitled to anticipated profits.

~~**§ 5.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.~~

~~**§ 5.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.7.~~

~~**§ 5.7** Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

~~**§ 5.8** The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 6.3.~~

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section ~~9.2.~~10.2.
(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

<< Chose One Option>>

Using the Architect's hourly rate schedule attached hereto, which includes Direct Personnel Expenses (as defined in Section 6.4.2), provided such total shall not exceed $.

On the basis of a lump-sum in the amount of $.

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§ 6.2.1 Reimbursable Expenses are in addition to ~~compensation for the Architect's professional services~~ the Architect's compensation for services performed and include expenses incurred by the Architect and ~~the~~ Architect's employees and consultants directly related to the ~~Project, as follows:~~ Project for:

.1 ~~Transportation and authorized out-of-town travel and subsistence;~~ Owner-authorized out-of-town travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to employees of the Owner, as posted at https://policy.umn.edu/finance/travel-appp;

.2 ~~Long-distance~~ reasonable long-distance telephone services, dedicated data and communication services, teleconferences, Project ~~Web sites,~~ web sites and extranets;

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.3 ~~Fees paid for securing approval of authorities having jurisdiction over the Project;~~

.4 ~~Printing,~~ Owner requested printing, reproductions, plots, standard form documents;

.5 ~~Postage, handling and delivery;~~

.6 ~~Expense of overtime work requiring higher than regular rates, if authorized in advance~~ .4 reasonable postage, handling and delivery of documents for bidding purposes, Owner review(s), or other specially mandated or required review(s) or as otherwise requested by the Owner;

.7 ~~Renderings, models, mock-ups, professional photography, and presentation materials~~ .5 renderings, models, mock-ups, and professional photography requested by the Owner;

.8 ~~Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~

.9 ~~All taxes levied on professional services and on reimbursable expenses;~~.6 Owner authorized special computer studies, videos or cds; or Owner authorized special reports required by any unique characteristic of the Project; and

.10 ~~Site office expenses; and~~

.11 ~~Other similar Project-related expenditures.~~.7 reproduction of record drawings (if applicable to the Project).

§ 6.2.2 ~~For Reimbursable Expenses,~~ FOR REIMBURSABLE EXPENSES, the compensation shall be the actual expenses incurred by the Architect and the Architect's consultants ~~plus an administrative fee of percent (%) of the expenses incurred.~~
directly related to the Project, without mark-up.

~~§ 6.3 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE~~

~~If the Owner terminates the Architect for its convenience under Section 5.5, or the Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:~~

§ 6.2.3 The not-to-exceed compensation amount for Reimbursable Expenses <<[is included in the compensation established in Section 6.1] or [shall be ($)]>>, subject to the limitations of Section 6.2.1.

§ 6.3Intentionally Deleted

§ 6.4.1 ~~An initial payment of ($) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~ Intentionally Deleted

§ 6.4.2 ~~Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~
~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~ %~~ Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee ben efits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

§ 6.4.3 ~~The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~
Payments are due and payable 30 days after receipt of the Architect's invoice.

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§ 6.4.4 ~~Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.~~IF THE SCOPE of the Project or of the Architect's services is changed materially, the amounts of compensation shall be equitably adjusted.

§ 6.4.5 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative pursuant to Section 9.1.

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§ 7.1 This Agreement 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 4.3.~~
and interpreted under the internal laws of the State of Minnesota without giving effect to conflict of law principles. All suits, actions, and causes of action relating to the construction, validity, performance or enforcement of this Agreement shall be in the courts of record in the State of Minnesota and venue shall be in Hennepin County.

§ 7.2 ~~Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.~~The Owner and the Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other party arising out of or related to this Agreement within the time period specified by applicable law.

§ 7.3 ~~The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.~~
Except to the extent expressly defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 7.4 ~~If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.~~ The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither Owner nor the Architect shall assign this Agreement without the written consent of the other.

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§ 7.7 ~~The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~

Project Management Information System

~~§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to~~

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~~perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.~~

§ 7.7.1 The Owner may, at it sole option, direct the Architect and/or other Project participants to utilize the Owner's internet-based Project Management Software. The functionality of this software may include, but is not limited to, the processing of Plan Reviews, Purchase Orders, Change Orders, Invoices, Payment Applications, Requests for Information, and Document Management related to the Project.

§ 7.7.2 If the Owner chooses to utilize its Project Management Software for the Project, the Owner will provide and manage a login license for the Architect's designated Project representative(s) at no cost to the Architect. The Owner will provide initial software training to the Architect's designated Project representative(s) at no cost to the Architect. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of this software by the Architect.

...

ARTICLE 9 OTHER CONDITIONS

§ 9.1 AUDIT RIGHTS.

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

§ 9.1.2 The Architect 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 Architect shall retain all such Records until the Claim has been resolved.

§ 9.1.3 The Architect shall require all payees to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the Architect and the payee.

§ 9.1.4 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 Architect's offices, to not interact with Architect's employees, and to not otherwise unreasonably interfere or disrupt the work of the Architect's employees.

§ 9.1.5 If an Audit discloses overpricing or overcharges (of any nature) by the Architect 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

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Architect. 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 Architect.

§ 9.2 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. The Architect shall not discriminate against employees, consultants, or applicants for employment or consulting, 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 Architect shall ensure that its consultants do not discriminate against employees or applicants for employment because of membership in any Protected Class. The Architect agrees to put in conspicuous places, available to employees and applicants for employment, notices to be furnished by the Owner setting forth the nondiscrimination provisions of this Section 9.2. If the compensation expected to be paid to the Architect exceeds $50,000, the Architect shall designate an Equal Employment Opportunity Officer, who shall have authority and responsibility for implementation of equal opportunity employment and affirmative action programs under this Agreement. The Architect 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 this Agreement. In all solicitations and advertisements for employees and consultants placed by or on behalf of the Architect, the Architect shall state that all qualified applicants will receive consideration for employment without regard to membership in a Protected Class. The Architect shall 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 Section 9.2. The Architect shall permit access to its books, records, and accounts by the Owner for the purpose of ascertaining compliance with these provisions. Noncompliance with any equal employment provision of this Agreement shall be a material default under this Agreement, which the Architect 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 Architect's fee as set forth in Section 6.1. The Owner and the Architect acknowledge and agree that the actual extent of Owner losses the Owner will incur as a result of the failure of the Architect to comply with the equal employment provisions of this Agreement cannot reasonably be determined as of the date of this Agreement and the liquidated damages amount is reasonable under the circumstances and not a penalty. The Architect shall take action necessary to enforce these provisions.

§ 9.3 PROHIBITION AGAINST GRATUITIES; ACCEPTANCE AGAINST ADVANTAGE. The Architect acknowledges having read and understood Minnesota Statutes, Section 15.43, which is incorporated herein by reference as if fully set forth herein. The Architect agrees that is 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 5.2. By executing this Agreement, the Architect certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially from this Agreement.

§ 9.4 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT AND SMALL BUSINESS PROGRAM. The Architect 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.pdf. The Architect acknowledges that it has a copy of this policy. As a material consideration for the Owner entering into this Agreement, the Architect 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 Architect agrees that it will fulfill the commitments with regard to the TBE Programs set forth in the Architect's Proposal and upon the Owner's request, provide substantiation of compliance.

§ 9.5 MINNESOTA GOVERNMENT DATA PRACTICES ACT. The Architect shall comply with the Minnesota Governmental Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") with

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regard to any information the Owner provides to the Architect that is subject to the Act. The Architect 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 Architect shall return any documents or other information the Owner has supplied to the Architect in connection with the services rendered under this Agreement, within 15 days after the completion of services, or upon request by the Owner, whichever occurs first.

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

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

§ 9.6.2 The Architect agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section 9.6. The Architect agrees that the Owner may obtain an injunction to prevent or enjoin any breach of this obligations of this Section 9.6. The Architect's obligations under this Section 9.6 shall survive completion of services or termination of this Agreement.

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

§ 9.7 PAYMENT OF ARCHITECT'S CONSULTANTS. In the event the Architect engages any consultant to perform any of the services under this Agreement, the Architect shall pay any such consultant within ten days (or such shorter period as required by law) of the Architect's receipt of payment from the Owner for undisputed services provided by the consultant. The Architect shall pay interest of 1.5% per month (or any part of a month) to the consultant on an undisputed amount not paid on time to the consultant. The minimum monthly interest penalty for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Architect shall pay the actual penalty due to the consultant. See Minnesota Statutes, Section 137.36.

§ 9.8 AMERICANS WITH DISABILITIES ACT GUIDELINES. The Architect shall design the Project in compliance with the current understanding and interpretation of the Americans with Disabilities Act Guidelines. Appendix A to the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 through 12213 and with adherence to any governing bodies having jurisdiction regarding access to the Project by the physically handicapped.

§ 9.9 NOTICE S. All notices shall be sent to the Project Manager and designed 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

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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.

§ 9.10 BUSINESS DAY. "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.

§ 9.11 INTELLECTUAL PROPERTY. The Architect warrants that any design, materials or products provided or produced by it or its consultants utilized in any manner in the performance of its services will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any intellectual property infringement claim by any third party against the Owner, the Architect, at its expense, shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless the Owner against any loss, cost, expense, or liability (including attorneys' fees) arising out of such claim, whether or not such claim is successful against the Owner. If any such claim occurs, or in the Architect's opinion is likely to occur, the Architect shall either procure for the Owner the right to continue using the design material or product that is the subject of the claim or replace or modify the design materials or products. This remedy is in addition to, and shall not be exclusive of, other remedies provided by law. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

§ 9.12 INDEMNITY. To the extent allowed by law, the Architect shall indemnify, defend (with counsel acceptable to the Owner), and hold harmless the Owner from and against all damages, losses and claims, including but not limited to attorneys' fees, arising in whole or in part out of the negligence, error, omission, or failure of performance by the Architect, its employees, agents, or consultants, or the breach of this Agreement or any implied covenants deemed to be applied thereto by the Architect or its employees, agents or consultants. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

ARTICLE 10 SCOPE OF THE AGREEMENT

§ 10.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 10.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B102–2007, Standard Form Agreement Between Owner and Architect

.2 Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

Owner's Request for Proposal, dated _____.
Architect's Proposal/Quality Control Plan, dated _____.

This Agreement entered into as of the day and year first written on page 1 of this Agreement.

OWNER **ARCHITECT**

Regents of the University of Minnesota

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User Notes: (1361790580)

(Signature)	*(Signature)*
(Printed name and title)	*(Printed name and title)*

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B102–2007, Standard Form Agreement Between Owner and Architect

.2 AIA Document E201–2007, Digital Data Protocol Exhibit, if completed, or the following:

.3 Other documents:

(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER	**ARCHITECT**
(Signature)	*(Signature)*
(Printed name and title)	*(Printed name and title)*

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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 10:48:56 on 07/08/2014 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 B102™ – 2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, 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)

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