**MATERIALS PURCHASING AGENT AGREEMENT**

This MATERIALS PURCHASING AGENT AGREEMENT (“**Agreement**”) is made as of DATE OF CONTRACT, 20\_\_, by and between REGENTS OF THE UNIVERSITY OF MINNESOTA, a Minnesota constitutional corporation ("**University**"), and CONTRACTOR NAME, a Minnesota corporation ("**Agent**").

* 1. The University and the Agent, as “Construction Manager,” have entered into that certain Standard Form of Agreement Between Owner and Construction Manager (AIA Documents A133-2009 and A201-2007, as modified) dated DATE OF CONTRACT (the "**Construction Agreement**") relating to the PROJECT NAME, Project No. PROJECT NUMBER (the "**Project**"), which Project will be constructed in accordance with plans and specifications prepared by ARCHITECT NAME (the “**Architect**”); and
  2. Certain other supplemental agreements and documents are described in and incorporated by reference in the Construction Agreement and are referred to herein as the "**Contract Documents**", including, without limitation, that certain letter agreement dated CONTRACT DATE, 20\_\_ between Agent and University (the “**Letter**”); and
  3. Pursuant to Article 6 of AIA Document A201-2007, as modified and incorporated in the Contract Documents (the “**General Conditions**”), in which the University reserved the right to award separate contracts for portions of the Project, and pursuant to the Letter, the University has instructed the Agent to construct the Project in part with materials, equipment and supplies purchased and supplied by the University, at the University’s sole cost and expense; and
  4. The University wants to appoint the Agent as its “Purchasing Agent” for purchasing certain materials, equipment, and supplies necessary to complete the Project. The Agent is willing to perform in such capacity and purchase such materials, equipment and supplies on behalf of the University, subject to the terms and conditions of this Agreement, so that the materials, supplies, and equipment purchased by the University through the Agent for the Project may qualify for exemption from sales tax under Minnesota Rules, Part 8130.1200, Subpart 3, Item D.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties hereby agree as follows:

1. Except as may be specifically stated in this Agreement, all terms and references used in this Agreement shall have the meanings set forth in the Contract Documents and shall be governed by the provisions of the Contract Documents, which Contract Documents are incorporated into this Agreement by this reference and for all purposes; provided, however, that (a) the scope of the Agent’s services, (b) the Agent’s warranty with respect to defective Materials (as defined in Section 2 herein) furnished under this Agreement, (c) the Agent’s responsibility for the deductible under the University’s Builder’s Risk insurance policy with respect to loss, damage or destruction of the Materials (subject to Section 7 herein), and (d) the provisions found in the General Conditions of the Contract Documents regarding taxes shall not apply with respect to the obligations of the Agent under this Agreement.
2. The University hereby appoints the Agent as its Purchasing Agent to act on behalf of the University in the purchase and acquisition of those materials, supplies, and equipment installed or used in or incorporated into the Project and identified on Exhibit A attached hereto (the “**Materials**”), it being the University’s intent that such purchases will qualify to be exempt from Minnesota Sales and Use Taxes in accordance with Minnesota Department of Revenue Rules, Part 8130.1200, Subpart 3, Item D.
3. The Agent shall, on behalf of the University, purchase the Materials in accordance with the specifications of the Contract Documents and during the time periods necessary for the Agent to comply with the Construction Agreement. To the extent necessary to acquire the Materials under the Construction Agreement, the Agent is authorized to and will appoint its subcontractors as additional Purchasing Agents to purchase items under the same terms and conditions as specified in this Agreement. The Agent shall solicit separate bids for materials-only from any such subcontractors. The Agent may, acting as the Contractor under the Construction Agreement and as the Agent under this Agreement, solicit separate bids for labor and for materials from the same subcontractor, provided that the Agent and the Contractor shall reserve the right to accept or reject each bid independently. The Agent will prepare bid tabulations for review by the University, and consult with the University before issuing purchase orders.
4. The University shall pay to the Agent a sum equal to (a) the cost of the Materials plus (b) an Agent’s Fee of CONTRACT PERCENTAGE% of the cost of all Materials plus (c) the wages and salaries and other compensation of the Agent’s personnel directly engaged in providing services under this Agreement, including those stationed at the Agent’s principal office or offices (“Administrative Services”) (collectively, the “**Agreement Price**”). The Agent shall charge Administrative Services at the hourly rates listed in Exhibit B, which rates include “labor burden” and all other amounts payable by the University for such services under this Agreement, up to a maximum of $ FEE AMOUNT.
   1. As of the date of this Agreement, the Agent and the University have established a budget of $FEE FOR MATERIALS for the Materials (the “Materials Control Estimate”), which amount is Contractor’s good faith estimate of the cost of the Materials, without sales taxes, plus a contingency.
   2. With each monthly application for payment pursuant to Section 10 of this Agreement, the Agent will provide the University with a financial analysis of the Materials Control Estimate. The analysis will consist (at a minimum) of the following information:
      1. The total amount of the Materials Control Estimate;
      2. An itemization and total of all bids the University has accepted and purchase orders the Agent, on behalf of the University, has issued for Materials to date, including the items included in the current application;
      3. The unobligated balance of the Materials Control Estimate,
      4. The Agent’s estimate of the cost of Materials that remain to be purchased;
      5. The anticipated excess or short fall in the Materials Control Estimate (item iii minus item iv).

In any month in which the Agent projects that the total cost of Materials for the Project will exceed the Materials Control Estimate, the Agent will not issue purchase orders for Materials until the University either authorizes an increase in the Material Control Estimate or a reduction in the Materials to be purchased. Agent shall consult with and advise the University in connection with the reconciliation of the Materials to be purchased with the Materials Control Estimate.

1. Title to each of the Materials purchased by the Agent pursuant to its duties as Purchasing Agent shall immediately vest in the University at the point of delivery. The Agent shall file no materialmen’s lien nor maintain any claim against the University’s real estate or improvements for or on account of any items purchased under the authority granted in this Agreement. The University shall have the right of entry and free access to the Project at all times and the right to inspect all items of the Materials installed or stored in and about the Project.
2. The Agent, as Purchasing Agent, shall receive delivery of all items of the Materials ordered by the Agent on behalf of the University under this Agreement, provided that all purchase orders shall provide that final acceptance by the University of delivery from a supplier or vendor shall be conditioned upon completed installation and proper performance thereof as determined by the University and Architect. Except with respect to its obligations to exercise reasonable care under this paragraph, the Agent makes no warranty as to the Materials purchased and shall have no obligation to the University for items that are not accepted by the University or are rejected by the University after acceptance other than its obligations set forth in Sections 8 and 12 herein.
3. The Agent shall exercise reasonable care and take reasonable precautions for safekeeping of all items of the Materials in its custody prior to installation, use or incorporation in the Project. Risk of loss, damage and destruction with respect to the Materials shall be that of the University, provided that the University retains its right to recover from anyone (including the Agent) responsible for causing any damage to the Materials.
4. All defective items of the Materials installed or used in or incorporated into the Project shall be the responsibility of the University, provided, however, that Agent as Purchasing Agent shall retain liability for its negligent acts and omissions, including the purchases of items that do not meet the specifications of the Contract Documents. The Agent shall, if requested by the University, act as the University’s agent in resolving disputes with material suppliers and manufacturers as to defective materials, subject to the University’s final approval. The Agent, as Agent for the University’s materials purchases, waives any and all claims for any increase in compensation and extension of time under this Agreement to perform arising out of or related to the failure of any vendor of the Materials to perform on time.
5. The Agent and any directed Subcontractors shall assert the University’s exemption from Minnesota sales and use taxes with respect to all items of the Materials which the Agent or its subcontractors purchase as agents for the University by (a) completing the Minnesota Department of Revenue Form ST3, entitled Certificate of Exemption, as a purchasing agent for the University of Minnesota, Pioneer Hall Renovation Project, according to the ST3 instructions, and (b) placing the following legend upon all orders for the purchase of such items:

This purchase is made by the undersigned on behalf of and as purchasing agent for Regents of the University of Minnesota, a Minnesota constitutional corporation (“University”) organized and operated exclusively for educational, research and outreach purposes, which is exempt from Minnesota sales and use taxation upon its purchases. This purchase qualifies for tax exempt treatment and is not subject to taxation.

Title to all materials and supplies purchased under this order shall pass directly from the Seller to University, which is solely responsible for payment. Invoices should be submitted and deliveries made to the undersigned as purchasing agent for University.

The following are instructions for completing Minnesota Department of Revenue Certificate of Exemption, Form ST3:

* Indicate that there is a Materials Purchasing Agent Agreement between the contractor and an exempt entity by checking the box at the top of the form
* Identify the Exempt Entity as “Regents of the University of Minnesota”
* Identify the Project as “Pioneer Hall Renovation”
* Identify the purchaser as the Purchasing Agent and complete the address and tax ID information
* Identify the seller as the material supplier and complete the address information
* Identify the type of business as “Construction”
* Circle “Other” as Reason for Exemption” and write “27” in the blank (which indicates “Purchasing Agent Agreement with Exempt Entity”)
* Sign and date form

1. As Purchasing Agent, the Agent shall collect and process all invoices or other statements from vendors or suppliers of the Materials, and shall submit payment requests to the University or as otherwise instructed by the University. Upon receipt of necessary funds, the Agent shall disburse such funds to the appropriate vendors and suppliers on behalf of the University. Payment requests under this Agreement shall be submitted with and subject to the same provisions as payment requests under the Construction Agreement, and the University shall make timely payment disbursements and maintain proper written records thereof. The Agent, as Purchasing Agent, shall furnish adequate notification to all vendors and suppliers that the obligation for payments due to such vendors and suppliers for Materials is that of the University and not the Agent. The Agent shall maintain and provide to the University, at least once each calendar year and upon request, an itemization of all items of the Materials purchased that are exempt from sales tax and the amount of sales tax savings.
2. The Agent acknowledges that the University is exempt from Minnesota sales and use taxes pursuant to Minn. Stat. Sec. 297A.70, Subd.2.
3. Upon request by the University, the Agent shall disclose the names of all persons with whom it contracts with respect to the purchase of the Materials under this Agreement. The Agent shall use its best skill and judgment in inspecting the Materials that are purchased, and shall promptly notify the University of any and all defects as the Agent becomes or reasonably should become aware of them. As agent for the University, the Agent shall contact the manufacturer or supplier in the University’s name for immediate replacement or correction of defective Materials and the Agent shall pursue all other remedial action for breaches of warranty as directed by University to the extent allowed by applicable law.
4. The Agent shall keep accounting records in connection with its performance under this Agreement in accordance with the Construction Agreement. All funds transferred to the Agent as the University’s disbursing agent shall be held by the Agent in trust as the University’s disbursing agent for payment for Materials. The Agent shall obtain lien waivers from all suppliers and vendors of Materials as requested by the University. Unless and until otherwise requested by the University, the Agent shall obtain lien waivers from all suppliers and vendors of Materials as it would from its own subcontractors and suppliers to protect the University.
5. If the Agent is obligated to pay any sales tax with respect to any items of the Materials purchased under the authority granted in this Agreement, the University shall be solely responsible for the payment of such tax, but only to the extent said tax does not result from the Agent’s negligence or breach of its obligations under this Agreement. Except to the extent arising from the Agent’s negligence or breach of its obligations under this Agreement, the University shall indemnify, defend, and hold the Agent harmless from and against the amount of any such tax, penalty or interest that becomes payable by the Agent directly or on behalf of its subcontractors or vendors by reason of valid order of the State of Minnesota, together with any costs of litigation and reasonable attorney’s fees incurred; provided however, that the Agent shall notify the University that the State of Minnesota is making a claim for such payment and afford the University the opportunity to contest such claim. At its sole option, the University may dispute, contest, or otherwise challenge the imposition or assessment of any such sales or use tax, without expense to the Agent. Any subcontractors appointed by the Agent as additional Purchasing Agents pursuant to the authorization contained in paragraph 3 of this Agreement shall be a third party beneficiary of this paragraph 14.
6. Disputes under this Agreement will be resolved in accordance with the dispute resolution provisions of the General Conditions of the Construction Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives, effective as of the day and year first above written.

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| UNIVERSITY:  Regents of the university of Minnesota  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | AGENT:  CONTRACTOR NAME  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT A**

**TO**

**MATERIALS PURCHASING AGENT AGREEMENT**

**MATERIALS**