

# DRAFT AIA® Document B101™ – 2007

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the **xxx** day of xxxx in the year **Two Thousand Twenty - xxx**

BETWEEN the Architect's client identified as the Owner:

Regents of the University of Minnesota  
400 Donhowe Building  
319 15<sup>th</sup> Avenue Southeast  
Minneapolis, Minnesota 55455

*Through its Project Manager*

Name:

Capital Project Management  
400 Donhowe Building  
319 15th Avenue Southeast  
Minneapolis, Minnesota 55455  
Phone: (612) xxx-xxxx  
E-Mail: xxxxxxxx@umn.edu

### 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.

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

and the Architect:

Company Name:  
Address  
City, State, Zip

Contact

Name:

Phone: (xxx) xxx-xxxx  
E-mail: xxxxxx@xxxx.xxx

for the following Project:

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

The Owner and Architect agree as follows.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1	Commencement of construction date:	
.2	Substantial Completion date:	Approximately July 2021 « »

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.1.1 The Architect shall provide its services directly or through consultants retained and paid by the Architect. The Architect shall not change the consultants and individual professionals listed, or use other consultants in performing its obligations under this Agreement, without the Owner's written consent. The Architect shall be responsible for the performance of its consultants. The Architect shall insure that its consultants abide by all of the terms and conditions of this Agreement.

§ 2.2 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 expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2.1 The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations, and codes and the Owner's Standards as published on the Owner's web site <https://cpm.umn.edu/resource-center/building-standards>

§ 2.2.2 Wherever this Agreement provides that the Architect may rely on information provided by the Owner, from any source, such reliance shall be reasonable, based on the Architect's standard of care.

§ 2.2.3 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.

§ 2.2.4 Subject to the Architect's standard of care, the Architect shall have the right to rely on information the Owner obtains from third parties and furnishes to the Architect only to the extent the Owner is entitled to rely on such information.

§ 2.2.5 The Architect has visited the site and reviewed the Owner's requirement and represents that the schedule and compensation are appropriate for the Project.

§ 2.3 The Architect has identified a representative authorized to act on behalf of the Architect with respect to the Project. The Architect shall not change its designated representative without the Owner's written consent.

§ 2.4 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.

§ 2.5 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

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

.2 Automobile Liability

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

.3 Workers' 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

\$500,000 Each Accident  
\$500,000 Disease-Policy Limit  
\$500,000 Disease-Each Employee

.6 Valuable Papers

The Architect shall 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, recreation, 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 minimum, the coverage available on the required policies.

§ 2.6 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.

§ 2.7 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 2.5 and 2.6, 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 for 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 the respect to any insurance carried by the Owner (including any self-insurance by the Owner).

§ 2.8 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 the Architect, engineer, or consultant first performed services in regard to the Project.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services as described in Article 4.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants (including any contractor retained by the Owner to provide preconstruction services). The Architect shall be entitled to rely on the accuracy and

completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. The Architect shall have primary responsibility for coordinating and accommodating the location of fixtures, equipment, cabling, conduit, wires, and other building components designed by the Owner and the Owner's consultants within the building components designed by the Architect, based on information provided by the Owner and the Owner's consultants. The Architect shall provide electronic background drawings for use by the Owner and the Owner's consultants.

§ 3.1.3 Within 30 days after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 During each design phase, the Architect shall evaluate the then-current version of the Owner's Standards, as applied to the Project, and recommended variances from the Owner's Standards if the Architect believes such variances will reduce costs, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner; and recommend changes to the Owner's program or preliminary design for the Project that the Architect reasonably expects will reconcile the program, Project budget and Project schedule, or reduce costs, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner.

## § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall promptly review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's Standards, program, schedule, budget for the Cost of the Work, site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall prepare a written report discussing energy conservation measures and techniques to be employed consistent with the Owner's Standards or the Architect's proposed variances from the Owner's Standards. Such written report shall include an analysis of the cost savings attributable to the incorporation of such measures and techniques.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3 and make recommendations, if any pursuant to Section 6.5.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.2.7 Upon request by the Owner, the Architect shall prepare drawings and shall participate in making a presentation of the Schematic Design to the Owner's Board of Regents.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including site plans, plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to site improvements and landscaping, architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, make recommendations, if any, pursuant to Section 6.5, and request the Owner's approval.

### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions, if any). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.4.6 If required as an Additional Service under Section 4.1 or Section 4.3 of this Agreement, the Architect shall cooperate with the Owner and independent professional consultants engaged by the Owner to review the plans and specifications. The Architect acknowledges that any such review will be for the benefit of the Owner and shall not relieve the Architect of any responsibility or obligation, or transfer to the Owner any liability or responsibility, for the adequacy of plans, specifications, or other of the Architect's services. The Owner shall provide the Architect with the results of such review. The Architect will consult with the Owner and the Owner's consultants concerning appropriate responses to review, and revise the Construction Documents accordingly. The Architect shall make any such revisions without additional cost to the Owner. The Architect shall be compensated for participating in the review process (but not for revising the Construction Documents) if the Owner ordered the review pursuant to Section 4.3.

§ 3.4.7 The Owner shall approve the Construction Documents or the Architect shall modify the Construction Documents at the Owner's request until the same are approved by the Owner.

## § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors or subcontractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by promptly preparing responses to questions from prospective bidders and providing clarifications and interpretations

of the Bidding Documents to all prospective bidders in the form of addenda; and, to the extent requested by the Owner, assisting the Owner or the Owner's Contractor in:

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders; and
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction as modified by the Owner (the "General Conditions"). If the Owner and Contractor further modify the General Conditions after the date of the Agreement, those modifications shall be incorporated into this Agreement. To the extent any such modifications affect the Architect's services under this Agreement, the Architect's compensation and schedule may be adjusted pursuant to Article 4.3.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, and Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment provided that the Architect shall not issue the final Certificate for Payment until the Owner confirms that the Contractor has satisfied all conditions under Section 9.10 of the General Conditions.



§ 3.6.1.4 The Architect shall, in coordination with the Contractor, arrange for preconstruction and progress meetings, and shall prepare and distribute records and minutes of such meetings to all appropriate parties.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 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.

§ 3.6.2.2 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.3 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. The Architect acknowledges that the Owner has independent rights to reject or stop the Work if the Contractor fails to correct Work that does not conform to the Contract Documents and to carry out the Work under Sections 2.3, 2.4, and 2.5 of the General Conditions, which rights do not give rise to a duty or responsibility of the Owner to the Architect or any other individual or entity.

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

§ 3.6.2.5 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

§ 3.6.2.6 At the Owner's request, the Architect shall advise the Owner with respect to Claims by the Contractor, and the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The

foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment (provided the Architect shall confirm that the Contractor has submitted all requested data with its Application for Payment), or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

#### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall promptly review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, subject to the standard of care and scope of services under this Agreement.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, (1) from time to time respond to the Owner's requests for inspection and other assistance in enforcing the Contractor's warranties, and (2) within two months before the expiration of the two-year period, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if (1) specifically designated in the table below as the Architect's responsibility, in which case the Owner shall compensate the Architect as provided in Section 11.1, or (2) ordered by the Owner pursuant to Section 4.3, in which case the Owner shall compensate the Architect pursuant to Section 11.3 and adjust the schedule for performance of the Architect's services.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility	Location of Service Description
§ 4.1.1 Programming (B202™-2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™-2007)		
§ 4.1.6 Building Information Modeling (E202™-2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™-2007)		
§ 4.1.10 Value Analysis (B204™-2007)		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™-2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings	Architect	Section 4.2
§ 4.1.15 As-Constructed Record drawings	Architect	Section 4.2
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™-2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™-2007)		
§ 4.1.22 Commissioning (B211™-2007)		
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™-2012)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™-2007)		
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.1.14 and § 4.1.15: Upon completion of the Construction Phase, the Architect shall prepare and deliver to the Owner one set of Project record drawings and specifications in an electronic format acceptable to the Owner, incorporating revisions made by the Architect during the Construction Phase and field changes noted on the Contractor's marked-up field set.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 may entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule. If the Architect believes it is entitled to additional compensation the Architect believes are needed under Section 4.3.1, or for other services requested by the Owner, the Architect shall notify the Owner in writing with reasonable promptness and (1) explain the basis of the Architect's belief that such services are outside the scope of Basic Services under Article 3 and

Additional Services under Section 4.1, and (2) provide an estimate of the probable cost of such services and project impact, if any, on the Architect's schedule. The Architect shall not provide services for which it believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization will either (1) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (2) deny that the Architect is entitled to additional compensation, and direct the Architect to proceed with the services, in which case the Architect may pursue a claim for additional compensation under Article 8. The Owner's determination that the Architect is not entitled to additional compensation for such services shall not relieve the Architect of its responsibilities under Section 2.2.

§ 4.3.1 Upon recognizing the need to perform the Additional Services listed in this Section 4.3.1, the Architect shall notify the Owner in writing and seek the Owner's written authorization pursuant to Section 4.3. The Architect shall perform the following Additional Services pursuant to the terms and conditions of Section 4.3:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Intentionally Deleted
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner after the Owner has approved Construction Documents, except to the extent required under Sections 6.5 or 6.7;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing other than the presentation to the Owner's Board of Regents described in Section 3.2.8;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto or if the Architect's performance is the subject of the proceeding in whole or in part;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services listed in this Section 4.3.2 during the Construction Phase:

- .1 Evaluating an extensive number of Claims (claims alleging negligence, errors, or omissions by the Architect or delay caused by the Architect shall be considered a Basic Service); or
- .2 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom (provided such revisions caused by the negligence, error, or omission of the Architect shall be considered a Basic Service

If the Architect believes it is entitled to additional compensation for such services, the Architect shall notify the Owner in writing before commencing such services, and (1) explain the basis for the Architect's belief that such services are outside the scope of Basic Services under Article 3 and Additional Services under Section 4.1, and (2) provide an estimate of the probable cost of such services and the probable impact, if any, on the Architect's schedule. If the Owner subsequently determines that all or part of these services are not required, or are required as Basic Services under Article 3 or Additional Services under Section 4.1, the Owner shall give prompt written

notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall furnish surveys as described in Section 5.4 and other information prepared by third parties for the Project to the extent the owner deems necessary for the performance of the Architect's services. In addition, the Owner may provide the Architect access to the Owner's records, which may contain information about the site and adjacent land and improvements that was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy, or completeness of information made to the Architect from the Owner records. The Architect shall not rely on such information without independently confirming that, in the Architect's professional judgement, the information is reliable.

§ 5.2 If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify 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 shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 Upon the Architect's reasonable request, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect, subject to Section 3.1.2. Upon the Architect's request, the Owner shall furnish copies of the scope of 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.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall advise the Owner of the requirements of such tests and consult with the Owner in selecting and ordering services from consultants who provide such tests, inspections, and reports.

§ 5.8 Intentionally Deleted

§ 5.9 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 documents provided to the Architect by the Owner or in any of the Architect's Instrument of Service, provided the Owner shall not become responsible for, and the Architect shall not be released from liability for, such faults or defects by reason of any failure of the Owner to discover or report.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall promptly provide the Owner with copies of any direct communications with the Contractor regarding performance of the Contract, including requests for information and change order proposals that may affect the design or cost of the Project or may require approval or other action by the Owner.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions.

§ 5.12 The Owner shall provide the Architect access to the site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; make reasonable judgements about what materials, equipment, component systems and types of construction are to be included in the Contract Documents; recommend reasonable adjustments in the program and scope of the Project; recommend that the Owner include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work; and recommend for the Owner's consideration variances to the Owner's Standards that, in the Architect's judgement, benefit the Project. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

The Architect shall prepare its estimates of the Cost of the Work in the Owner's format, with line items based on the standard Construction Specifications Institute ("CSI") divisions of the Work. If the Owner retains a consultant (including a Contractor) to provide preconstruction services during the design phases of the Architect's services, including cost estimating services, the Architect will cooperate with such services, which cooperation shall include in each phase of the design and construction document services:

- .1 provide information the consultant reasonably requires to perform its services;
- .2 reviewing design alternatives
- .3 reviewing estimates of the Cost of the Work and recommendations for adjustments to Project program, design, schedule, and budget; and
- .4 incorporating recommendations approved by the Owner in the design or construction documents.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Intentionally Deleted

§ 7.2 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.

§ 7.3 Without limiting the generality of Section 7.2, 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.

§ 7.3.1 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 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 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 of prints and electronic copies of the Instruments of Service, as completed through the date of termination.

§ 7.5 Notwithstanding anything to the contrary in this Agreement, the Architect and its consultants shall have a 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 the Architect shall be responsible for the consequences of such use.

§ 7.6 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 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 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 within the time period specified by applicable law.

§ 8.1.2 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 the General Conditions. 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. The Architect's obligations under this section shall survive completion of services or termination of this Agreement.

§ 8.1.3 The Owner and the Architect shall endeavor to resolve claims, disputes or other matters in question ("Dispute") between them by negotiation in good faith.

### § 8.2 MEDIATION

§ 8.2.1 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 8.2 shall survive completion of services or termination of this Agreement.

§ 8.2.2 The Owner and Architect shall endeavor to resolve Disputes 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 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.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a Dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in Hennepin County, Minnesota.

## ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, without cause, for more than 30 consecutive days, 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. If appropriate, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 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 not less than 30 days' written notice.

§ 9.4 Except as otherwise specifically provided in this Agreement, 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.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience.

§ 9.6 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. The Architect shall not be entitled to anticipated profits.

§ 9.7 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 7.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 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 Hennepin County. The internal laws of the State of Minnesota shall govern the

validity, construction, and enforceability of this Agreement without giving effect to conflict of law principles.

§ 10.2 Terms in this Agreement shall have the same meaning as those in General Conditions.

§ 10.3 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.

§ 10.4 Time is of the essence in this Agreement.

§ 10.5 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.

§ 10.6 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 site.

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

§ 10.8 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.

#### § 10.9 Project Management Information System

§ 10.9.1 The Owner may, at its sole option, direct the Architect and/or the 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.

§ 10.9.2 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 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, and the Architect's Additional Services described in Section 4.1, the Owner shall compensate the Architect as follows:

Authorized upon execution of this Agreement:

Schematic Design: Using the Architect's hourly rate schedule attached hereto, provided such total shall not exceed One Hundred Five Thousand Six Hundred and 00/100 Dollars (\$105,600.00).

Design Development: Using the Architect's hourly rate schedule attached hereto, provided such total shall not exceed One Hundred Fourteen Thousand Four Hundred and 00/100 Dollars (\$114,400.00).

Construction Documents: Using the Architect's hourly rate schedule attached hereto, provided such total shall not exceed One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00).

§ 11.2 Intentionally Deleted

§ 11.3 For Additional Services that may arise during the course of the Project under Section 4.3, the Owner shall compensate the Architect as follows:

Not included.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent ( 0 %).

§ 11.5 Progress payments for Basic Services for each phase of services and Additional Services under Section 4.1 shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase		percent (	0	%)
Construction Phase		percent (	0	%)
<hr/>				
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are attached hereto.

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .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;
- .2 Long distance telephone services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Owner-requested printing, reproductions, plots, and standard form documents;
- .4 Postage, handling and delivery of Instruments of Service as requested by the Owner;
- .5 Renderings, models, mock-ups, professional photography, and presentation materials (i.e. computer studies, videos or optical discs) requested by the Owner; and
- .6 Site office expenses.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the actual expenses incurred by the Architect and the Architect's consultants, without markup.

§ 11.8.3 The not-to-exceed compensation amount for Reimbursable Expenses shall be as follows:

Included in Basic Services Fee  
§ 11.9 Intentionally Deleted

**§ 11.10 PAYMENTS TO THE ARCHITECT; AUDIT**

§ 11.10.1 Intentionally Deleted

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable 30 days after receipt of the Architect's invoice.

§ 11.10.3 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, except to the extent the Architect is responsible for such changes in the Work.

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

§ 11.10.4.1 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, subcontractor 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 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 discs or suitable alternate computer exchange formats.

§ 11.10.4.2 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.

§ 11.10.4.3 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.

§ 11.10.4.4 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 the Architect's employees, and not otherwise reasonably interfere with or disrupt the work of the Architect's employees.

§ 11.10.4.5 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 reasonable time not to exceed 90 days from presentation of the Owner's findings to the Architect.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

### § 12.1 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 for the nondiscrimination provisions of this Section 12.1. 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 or 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 these provisions. Noncompliance with any equal employment provision of this Agreement shall be material default under this Agreement, which the Architect shall cure within 14 calendar days of notice of the 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 compensation set forth in Section 11.1. 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.

### § 12.2 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 its participation with any employee of the Owner in acts that violate Minnesota Statutes, Section 15.43 constitutes a material default under this Agreement entitling the Owner to terminate for cause, pursuant to Section 9.4. By executing this Agreement, the Architect certifies that no officer, representative, agent, or employee of the Owner has benefited or will benefit financially or materially from this Agreement.

### § 12.3 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 <https://policy.umn.edu>. 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.

### § 12.4 MINNESOTA GOVERNMENT DATA PRACTICES ACT

The Architect shall comply with the Minnesota Government 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 received 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.

#### **§ 12.5 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 who 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.

**§ 12.5.1** "Confidential Information" means all Owner information, knowledge, 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 in its possession before beginning the Project and before disclosure by the Owner.

**§ 12.5.2** 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 12.5. The Architect agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section 12.5. The Architect's obligations under this Section 12.5 shall survive completion of services or termination of this Agreement.

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

#### **§ 12.6 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.

#### **§ 12.7 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 government bodies having jurisdiction regarding access to the Project by the physically handicapped.

#### **§ 12.8 NOTICES**

All notices shall be sent to the Project Manager and designated representative of the party receiving notice, at the address, e-mail address, or facsimile number provided the 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 sent by electronic mail or facsimile after 4:00 p.m. CST, delivery shall be deemed effected as of the next Business Day, provided any deliver 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.

#### § 12.9 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 the 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.

#### § 12.10 INTELLECTUAL PROPERTY

The Architect warrants that any design, materials, or 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 attorney’s 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.

### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 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.

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

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect as modified by Owner;
- .2 The General Conditions effective as of the date of this Agreement, which the Architect acknowledges that it received, read, understands, and agrees to be bound by and comply with;
- .3 Other documents:  
Proposal,

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

**OWNER**

**Regents of the University of Minnesota**

**ARCHITECT**

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Scott Everson, Director  
Capital Project Management