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AIA[®] Document B102[™] – 2017

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

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

BETWEEN the Architect's client identified as the Owner:

The Owner:

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

Through its Project Manager:

Name
Capital Project Management
Phone: (612) xxx-xxxx
E-Mail: xxxxx@umn.edu

And the Consultant (the "Architect"):

The word Architect is used universally herein to identify the organization
named on page one of the Agreement.

Company Name
Address
City, State Zip

Contact:

Name
Phone:
Email:

the following (hereinafter referred to as "the Project"):

University of Minnesota Project Name:
University Project Number:

The Owner and Architect agree as follows.

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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.

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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

- §1.1 The Architect shall provide the following professional services: As described in the Architect's Proposal as accepted by the Owner and attached to and incorporated in this Agreement.
- §1.2 The Architect shall perform its services with a standard of care consistent with the professional skill and care ordinarily provided by sophisticated architects with experience in projects similar to the Project practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services promptly and expeditiously as is consistent with the Architect's standard of care and the orderly progress of the Project.
- §1.3 The Architect's services to be performed under this Agreement shall commence on the date set forth on page 1 of this Agreement and, subject to modification authorized by the Owner, Substantial Completion shall be achieved as soon as possible.
- §1.4 The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations and codes and the Owner's Standard and Procedures for Construction and Exterior Design Standards current as of the date of this Agreement as published on the Owner's website (www.cpm.umn.edu).
- §1.5 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.
- §1.6 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.
- §1.7 The Architect shall promptly review information provided by the Owner, correlate its review with information obtained by the Architect from other sources, and promptly report to the Owner errors, inconsistencies or omissions discovered or made known to the Architect.
- §1.8 The Architect shall prepare monthly and weekly progress reports in such form required by the Owner. Each progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefor and the new schedule, as well as the number of worker-days worked for each category of labor and the projected Work to be completed in the next succeeding month. The Architect shall cooperate with the Owner to prepare such additional reports as required by the Owner.
- §1.9 The Architect shall, at its sole cost and expense, maintain the following insurance for the duration of this Agreement and for a period of at least three years after the date of Substantial Completion or earlier termination of this Agreement, with insurers having an A.M. Best rating of A-VII or better and licensed to do business in the State of Minnesota:

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- .1 General Liability (including contractual liability)
 - \$2,000,000 General Aggregate (per project)
 - \$2,000,000 Products/Completed Operations
 - \$2,000,000 Each Occurrence
 - \$2,000,000 Personal/Advertising Injury (any one person or organization)
 - \$ 50,000 Fire Damage (any one fire)
 - \$ 5,000 Medical Payments (any one person or occurrence)
 - .2 Automobile Liability
 - \$2,000,000 Bodily Injury/Property Damage (per accident or loss for owned, non-owned and hired vehicles)
 - Statutory Personal Injury Protection
 - .3 Worker's Compensation
 - Statutory coverage limits for Minnesota and All States Endorsement
 - .4 Professional Liability
 - \$1,000,000 per claim and \$2,000,000 aggregate
 - .5 Employer's Liability
 - \$50,000 Each Accident
 - \$500,000 Disease - Policy limit
 - \$500,000 Disease - Each Employee
 - .6 Valuable Papers. The Architect must purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed and electronic documents on an all-risk basis in an amount sufficient to cover the cost of research, re-creation or reconstruction of valuable papers or records related to the Project.
 - .7 Umbrella Liability. The Architect may use an umbrella or excess policy to supplement or provide any of the policy limits listed above. The umbrella or excess policy shall be follow-form of the required coverage or provide, at a minimum, the coverage available on the required policies.

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

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

2) waive all rights of subrogation against the Owner, the Contractor, and their officers, employees, contractors and subcontractors. Each policy, except professional liability and worker's compensation Schedule A, shall name the Owner as an additional insured, with such coverage being primary and non-contributory with respect to any insurance carried by the Owner (including any self-insurance by the Owner).

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

ARTICLE 2 OWNER'S RESPONSIBILITIES

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

Architect shall be solely responsible for identifying and requesting such items.

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

Architect's services.

ARTICLE 3 USE OF ARCHITECT'S DOCUMENTS

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

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

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

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

- §3.4 Notwithstanding anything to the contrary in this Agreement, the Architect and its consultants shall have the right to retain a copy and use the instruments of service for any lawful purpose, including without limitation use of elements of the design on other projects, provided that the Architect shall be responsible for the consequences of such use.
- §3.5 All electronic copies of drawings that the Architect is required to deliver pursuant to this Agreement shall be in a format acceptable to the Owner.

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ARTICLE 4 MEDIATION; LITIGATION

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

this Agreement.

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

a complaint but, in such event, mediation shall proceed in advance of litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

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

ARTICLE 5 TERMINATION OR SUSPENSION

- §5.1** If the Owner fails to make payment when due the Architect for services and expenses in accordance with this Agreement, the Architect may, upon 30 days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within 30 days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services due to the Owner's failure to make payment, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by the Architect was otherwise not warranted.
- to the Owner for delay or damage caused the Owner because of such suspension of services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by the Architect was otherwise not warranted.
- §5.2** Either party may terminate this Agreement upon not less than 30 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- §5.3** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.
- §5.4** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. The Architect shall not be entitled to anticipated profits.

ARTICLE 6 COMPENSATION

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

Per the Proposal, Compensation shall not exceed

- §6.2 COMPENSATION FOR REIMBURSABLE EXPENSES**

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

- .1 Owner-authorized out-of-town travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to employees of the Owner, as posted at <http://process.umn.edu/groups/ppd/documents/policy/Travel.cfm>;
- .2 reasonable long-distance telephone services, dedicated data and communication services, teleconferences, Project web sites and extranets;
- .3 Owner requested printing, reproductions, plots, standard form documents;
- .4 reasonable postage, handling and delivery of documents for bidding purposes, Owner review(s), or other specially mandated or required review(s) or as otherwise requested by the Owner;
- .5 renderings, models, mock-ups, and professional photography requested by the Owner;
- .6 Owner authorized special computer studies, videos or cds; or Owner authorized special reports required by any unique characteristic of the Project; and
- .7 reproduction of record drawings (if applicable to the Project).

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

§6.2.3 Compensation for Reimbursable Expenses included in the amount specified in §6.1.

§6.3 Intentionally Deleted

§6.4 PAYMENTS TO THE ARCHITECT

§6.4.1 Intentionally Deleted

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

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

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

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

ARTICLE 7 MISCELLANEOUS PROVISION

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

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

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

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

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

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

§7.7 Project Management Information System

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

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

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows: None.

ARTICLE 9 OTHER CONDITIONS

§9.1 AUDIT RIGHTS

§9.1.1 The Owner and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Architect's information, materials, records, or data relating to this Project, including but not limited to, accounting records, written policies and procedures, subcontract files (including subcontracts, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating Work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records"). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where the Architect's Records have been generated from computerized data, the Architect agrees to provide the Owner with extracts

of data files in computer readable format on disks or suitable alternative computer exchange formats.

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

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

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

§9.1.5 If an Audit discloses overpricing or overcharges (of any nature) by the Architect to the Owner in excess of 1% of the total contract billings, in addition to repayment or credit for overcharges, the reasonable, actual cost of the Audit shall be reimbursed to the Owner by the Architect. Any adjustments and/or payments that must be made as a result of any Audit shall be made within a reasonable time not to exceed 90 days from presentation of the Owner's findings to the Architect.

§9.2 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. The Architect shall not discriminate against employees, consultants, or applicants for employment or consulting, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, veteran status, disability, sexual orientation, age, or membership in any other protected class under state, federal or local law (the "Protected Classes"). The Architect shall ensure that its consultants do not discriminate against employees or applicants for employment because of membership in any Protected Class. The Architect agrees to put in conspicuous places, available to employees and applicants for employment, notices to be furnished by the Owner setting forth the nondiscrimination provisions of this Section 9.2. If the compensation expected to be paid to the Architect exceeds \$50,000, the Architect shall designate an Equal Employment Opportunity Officer, who shall have authority and responsibility for implementation of equal opportunity employment and affirmative action programs under this Agreement. The Architect shall submit to the Owner for approval a written copy of its program or certificate of compliance from the State of Minnesota within 14 days after execution of this Agreement. In all solicitations and advertisements for employees and consultants placed by or on behalf of the Architect, the Architect shall state that all qualified applicants will receive consideration for employment without regard to membership in a Protected Class. The Architect shall furnish to the Owner, if requested, information and periodic reports in a format to be reasonably agreed upon, to substantiate its compliance with the requirements of the policy set forth in this Section 9.2. The Architect shall permit access to its books, records, and accounts by the Owner for the purpose of ascertaining compliance with these provisions. Noncompliance with any equal employment provision of this Agreement shall be a material default under this Agreement, which the Architect shall cure within 14 calendar days of notice of default from the Owner. In addition to other remedies available, failure to cure shall entitle the Owner to liquidated damages in an amount equal to 5% of the Architect's fee as set forth in Section 6.1. The Owner and the Architect acknowledge and agree that the actual extent of Owner losses the Owner will incur as a result of the failure of the Architect to comply with the equal employment provisions of this Agreement cannot reasonably be determined as of the date of this Agreement and the liquidated damages

amount is reasonable under the circumstances and not a penalty. The Architect shall take action necessary to enforce these provisions.

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

oyee of the Owner has benefited or will benefit financially from this Agreement.

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§9.4 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT AND SMALL BUSINESS PROGRAM. The Architect acknowledges that the Owner has a policy to establish and implement its Targeted Business, Urban Community Economic Development, and Small Business Program (the "TBE Programs"). A copy of this policy is available at <http://www1.umn.edu/regents/policies/administrative/TargetedBusiness.pdf>. The Architect acknowledges that it has a copy of this policy. As a material consideration for the Owner entering into this Agreement, the Architect agrees to satisfy this policy and to provide information regarding its actions intended to satisfy this policy that may be requested by the Owner. The Architect agrees that it will fulfill the commitments with regard to the TBE Programs set forth in the Architect's Proposal and upon the Owner's request, provide substantiation of compliance.

egarding its actions intended to satisfy this policy that may be requested by the Owner. The Architect agrees that it will fulfill the commitments with regard to the TBE Programs set forth in the Architect's Proposal and upon the Owner's request, provide substantiation of compliance.

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

documents or other information the Owner has supplied to the Architect in connection with the services rendered under this Agreement, within 15 days after the completion of services, or upon request by the Owner, whichever occurs first.

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

to the Owner.

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

its possession before beginning the Project and before disclosure by the Owner.

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

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

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

unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Architect shall pay the actual penalty due to the consultant. See Minnesota Statutes, Section 137.36.

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

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

or facsimile must be confirmed by a hard copy mailed on the date of transmittal. Notices sent by registered or certified mail shall be deemed to be given on the second Business Day from the date the same are deposited in said mail. Notices given in any other manner shall be deemed given on the date actually received.

§9.10 BUSINESS DAY. "Business Day" as used herein shall mean and refer to any day that the University of Minnesota is open to the general public. In the event that the deadline for a party's performance hereunder falls on a day other than a Business Day, then such deadline shall be deemed extended to the next Business Day thereafter.

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

by law. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

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

ARTICLE 10 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B102-2017, Standard Form Agreement Between Owner and Architect
- .2 **Other documents: Proposal dated**

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

Regents of the University of Minnesota

Architect

Scott Everson
Director
Capital Project Management