



AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of

(In words, indicate day, month and year.)

First date in the signature page in the attached AIA Document B101-2007 Exhibit A
("Exhibit A")

BETWEEN the Architect's client identified as the Owner:

(Name, , address and other information)

See Exhibit A.

and the Architect:

(Name, address and other information)

See Exhibit A.

for the following Project:

(Name, location and detailed description)

Centennial Student Union 2011 Ballroom Renovation
Minnesota State University, Mankato

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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User Notes: MnSCU contract effective 1 February 2010

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the information set forth in this Article 1 and in Exhibit A, ("Initial Information"): *(Complete Exhibit A, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

§ 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: See Exhibit A

.2 Substantial Completion date: See Exhibit A

§ 1.3 The Owner and Architect may reasonably 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.

§ 1.4 This Agreement shall be effective upon the date that the final required signature is obtained by the Owner, or the date of the issuance of a notice to proceed, whichever is later and shall remain in effect until all obligations have been satisfactorily fulfilled. For other time parameters see Section A.1.10 in Exhibit A

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's consultants are identified in Exhibit A. The Architect shall not change the consultants listed in Exhibit A, 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 ensure that its consultants abide by all of the terms and conditions of this Agreement and, when applicable, are duly licensed and authorized to transact its business in the State of Minnesota.

§ 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 and Procedures for Construction and Exterior Design Standards that may exist as of the date of this Agreement ("Owner's Design Standards").

§ 2.2.2 Whenever 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 contained in Section 2.2.

§ 2.2.3 The Architect shall promptly review information provided by the Owner, correlate its review and information obtained by the Architect from other sources, and promptly report to the Owner any errors, inconsistencies or omissions that may exist in such information.

§ 2.2.4 Subject to the Architect's standard of care contained in Section 2.2, 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 represents and acknowledges that it has visited the site and reviewed the Owner's requirements, and that all schedules prepared for and compensation to be supplied for the Project are appropriated.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project, which such representative must be acceptable to the Owner. The Architect may not, and shall not, change such representative without the Owner's written consent.

§ 2.4 The Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project. The Owner, upon written disclosure by the Architect, will consider situations where the Architect believes that the appearance, or the potential for the appearance, but not the actuality, of a conflict of interest exists.

2.5 INSURANCE

§ 2.5.1 The Architect shall, at its sole cost and expense, maintain the insurance specified in this Section 2.5 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. Such insurance shall be placed with insurers that have an A.M. Best rating of A- (minus) and a Financial Size Category of Class VII, or better, and are licensed to do business in the State of Minnesota. The Architect shall be solely responsible for payment of all insurance premiums.

.1 General Liability

The Architect shall maintain Commercial General Liability insurance to cover claims that may arise from operations under this Agreement, whether such operations are by the Architect, a consultant, or anyone directly or indirectly employed under this Agreement. Unless otherwise specified, such insurance minimum amounts shall be as follows:

\$2,000,000 - per occurrence

\$2,000,000 - annual aggregate applying per project or location

\$2,000,000 - annual aggregate applying to Products/Complete Operations

\$50,000 - Fire Damage (any one fire)

\$5,000 - Medical Expense (any one person)

The following coverage shall be included in such insurance:

Premises and Operations Bodily Injury and Property Damage
Personal Injury and Advertising Injury
Products and Completed Operations Liability
Contractual Liability as provided in Insurance Services Office (ISO) form CG 00 01 10 01 or its equivalent, and as applicable
Pollution exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – CG 00 01 10 01 or equivalent
Independent Contractors (let or sublet work)
Host Liquor Liability
Waiver of Subrogation in favor of the Owner

.2 Automobile Liability

The Architect shall maintain Business Automobile Liability coverage for liability arising out of the operations, use or maintenance of all owned, non-owned, and rented vehicles. Unless otherwise specified, the insurance minimum amounts shall be as follows:

\$2,000,000 - per occurrence Combined Single limit for Bodily Injury and Property Damage

The following coverages shall be included in such insurance:

Owned, Hired and Non-owned
Waiver of Subrogation in favor of the Owner

.3 Workers' Compensation

The Architect shall provide workers' compensation insurance for all employees and shall require any consultant to provide workers' compensation insurance in accordance with the statutory requirements of the State of Minnesota, and shall include:

Coverage B. Employers' Liability including Stop Gap Liability for monopolistic states, at limits of not less than \$100,000 bodily injury by disease per employee; \$500,000 bodily injury by disease aggregate; and \$100,000 bodily injury by accident.

Coverage C. All States coverage.

If applicable, USL&H, Maritime Voluntary, and Foreign coverage.

A waiver of subrogation in favor of the Owner.

.4 Professional Liability

The Architect shall maintain professional liability insurance covering negligent acts, errors or omissions, arising out of performance of, or the failure to perform, any services included in this Agreement. Additionally, the Architect shall require its consultants and their sub-consultants, if any, to maintain applicable professional liability insurance. Unless otherwise specified, the minimum amounts for such insurance shall be as follows:

Minimum limit of liability of \$2,000,000 per claim.

\$2,000,000 annual aggregate.

Any deductible will be the sole responsibility of the Architect and may not exceed \$50,000 without the written approval of the Owner. If the Architect desires authority from the Owner to have a deductible in a higher amount, the Architect shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting their most current audited financial statements, so that the Owner can ascertain the ability of the Architect to cover the deductible from the Architect's own resources.

If the policy is claims made, it shall contain the following language:

Prior acts or retroactive date of coverage shall not be subsequent to the effective date of this Agreement; and Architect shall carry such insurance for a period of at least five (5) years, if commercially available, otherwise a minimum of three (3) years, after final substantial completion or earlier termination of this Agreement. If the professional liability coverage is cancelled, replaced with a policy with different terms and conditions (e.g., retroactive date) or non-renewed by either the insured or the insurer, then extended reporting period coverage (or equivalent) must be purchased to fulfill this requirement.

- .5 Valuable papers.
The Architect shall maintain 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.
- .6 Umbrella Liability.
The Architect may use an umbrella or excess liability policy to supplement or provide any of the insurance policy limits required by this Agreement. The umbrella or excess liability policy shall be follow-form of the required coverage or provide, at a minimum, the coverage available on the required insurance policies.

§ 2.5.2 Additional Insurance Conditions

- .1 The policies of insurance to be maintained by the Architect shall be the primary and non-contributory to any other valid and collectible insurance available to the State of Minnesota and the Board of Trustees of the Minnesota State Colleges and Universities, to include the Project's College or University, with respect to any claim arising out of this Agreement.
- .2 Insurance companies for all policies shall waive the right to assert immunity of the Owner as a defense to any claims made and endorsements to policies or the certificate shall indicate this waiver.
- .3 The requirements contained in this Section 2.5 establishes minimum insurance requirements. It is the sole responsibility of the Architect to determine the need for and to procure additional insurance that may be needed in connection with this Agreement.
- .4 Certificates of Insurance acceptable to the Owner shall be submitted prior to commencement of the work under this Agreement and from time to time thereafter upon written request of the Owner for as long as such insurance is required to be maintained under this Agreement. Such Certificates and the insurance policies shall contain a provision that coverage afforded under these policies shall not be cancelled, modified, terminated, allowed to lapse, or be modified in a material way without at least thirty (30) days advanced written notice to the Owner.
- .5 A full-certified copy of any policy and endorsements obtained by the Architect as required above, may be requested by the Owner at any time, and upon such request the Architect shall provide the requested policy or endorsement to the Owner.
- .6 Each such insurance policy, except for the professional liability policy and the worker's compensation policy, shall name the Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota as "Additional Insureds", but only with respect to claims arising out of the Architect's negligence or for the negligence of those for whom the Architect is responsible, by endorsement, ISO Forms CG 20 10 and CG 20 37 or their equivalent.

§ 2.5.3 Waivers of Subrogation

To the extent that loss or damage to property, materials, supplies and equipment is covered by insurance pursuant to the provisions of AIA Document A201 –2007, the General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner ("General Construction Contract Conditions"), the Architect and the Architect's consultants and sub-consultants of all tiers, and the Owner and the Owner's consultants of all tiers waive all rights against each other and against the Contractor and the Contractor's subcontractors of all tiers for loss or damage to said property, materials, supplies and equipment.

§ 2.6 Change in Services

§ 2.6.1 The Architect's services for the Project, including services required of the Architect's consultants, may be changed or modified after execution of this Agreement, without invalidating the Agreement, if approved in advance by the Owner and if mutually agreed in writing, by supplemental agreement. Except for a change due to the fault of the Architect, a change in the Architect's services for the Project shall entitle the Architect to an adjustment in compensation and Reimbursable Expenses, with such adjustment to be negotiated by the Owner and the Architect and included in the supplemental agreement. Architectural services rendered and expenses incurred, in whole or in part, to correct an error or omission of the Architect shall not be compensated or reimbursed by the Owner and shall be borne solely by the Architect.

§ 2.6.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 A material change in the instructions or acceptances/approvals given by the Owner that necessitate revisions in the Instruments of Service;
- .2 Post Agreement enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service, and which could not reasonably have been foreseen;
- .3 Decisions of the Owner not rendered in a timely manner that impact the cost of the Architect's performance;
- .4 A significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 A material failure of performance on the part of the Owner, the Owner's Representative, or the Owner's consultants or contractors;
- .6 Material preparation for and attendance at a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto; and
- .7 Material change in the information contained in Article 1.1 that is not the result of any of the actions of the Architect or caused by the Architect.

§ 2.7 At the time of the Architect's submission to the Owner for the Owner's review and acceptance of, respectively, the Schematic Design Documents, the Design Development Documents, and the Construction Documents, the Architect shall certify that said documents have been reviewed for deviations from the Owner's Design Standards, and that to the best of the Architect's knowledge no such deviations exist except those for which a variance has been duly granted.

(Paragraphs deleted)

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and Exhibit A and include structural, mechanical, civil and electrical engineering services and landscape architecture services. Services not set forth in this Article 3 or Exhibit A are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, administer the Project, consult with the Owner, research applicable design criteria, including but not limited to the Owner's Design Standards, attend Project meetings, communicate with members of the Project team, issue progress reports to the Owner and generally coordinate and cooperate with the Owner's Representative and the Owner in all matters effecting the Project.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Owner's Representative, and the Owner's consultants. The Architect shall be entitled to reasonably rely on the accuracy and completeness of services and information furnished by the Owner, the Owner's Representative, 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 Architect, based on information provided by the Owner and/or the Owner's Representative.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's and the Owner's Representative's acceptance 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 and Owner's Representative's review, for the performance of the Owner's consultants, and for approval of by governmental authorities having jurisdiction over the Project. Once accepted 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 or Owner's Representative's directives or substitutions made without the Architect's approval.

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§ 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 and the Owner's Representative 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 The Architect shall promptly forward to the Owner and the Owner's Representative copies of all relevant Project correspondence issued or received by the Architect and/or the Architect's consultants.

§ 3.1.8 During each design phase, the Architect shall evaluate the Owner's Design Standards and recommend any variances that should be made thereto or therefrom that the Architect believes will reduce costs, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner, and the Architect shall further recommend any 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.

§ 3.1.9 The Architect shall notify the Owner and the Owner's Representative, in writing, of any other information needed for the Project that is not included in or to be provided under this Agreement.

§ 3.1.10 The Owner is not responsible for identifying what information, survey services, or reports that are required or needed for the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall promptly review the program and other information furnished by the Owner or the Owner's Representative, 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 Design Standards, Owner's program, schedule, Owner's budget for the Cost of the Work, Project 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 promptly notify the Owner and the Owner's Representative 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 the Owner's Representative 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, and issuance of a notice to proceed, 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. The Architect shall exercise the level of care specified in Section 2.2 in its preparation of the Schematic Design Documents, and such documents shall conform to the Owner's program, Owner's Design Standards, the schedule accepted by the Owner, and the Cost of the Work as such term is defined in Section 6.1

§ 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 Owner may obtain other environmentally responsible design services under Article 4. The Architect shall prepare a written report discussing

energy conservation measures and techniques to be employed consistent with the Owner's Design Standards or the Architect's proposed variances from such 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.

§ 3.2.7 The Architect shall complete and submit the Schematic Design Documents to the Owner no later than the number of calendar days following its receipt of authorization to proceed with the Schematic Design Phase per Exhibit A, and request the Owner's approval.

§ 3.2.8 The Architect shall determine all major architectural and engineering systems, and shall prepare a written description of the Project together with Schematic Design Documents, specifications, and other description as necessary to properly convey the scale and relationship of the Project components, including, for new construction, site selection, building placement at the site, and response to all related considerations, including but not limited to soil profiles, soil consolidation, ground water level and drainage, and entry/exit relationships to existing buildings.

§ 3.2.9 For projects involving existing construction, the Architect shall verify significant existing conditions to be included in the Project and shall incorporate this information into the written description required by Section 3.2.8.

§ 3.2.10 The Architect shall meet at least once, and more often if required, with representatives of the State Building Code and Standards Division, and with local building and fire code officials, to identify and correct all non-compliance(s).

§ 3.2.11 The Architect shall at appropriate time(s) meet with the Owner and the Owner's Representative to discuss Schematic Design considerations currently being evaluated and Schematic Design conformance to the Owner's Design Standards.

§ 3.2.12 The Architect shall submit to the Owner six (6) complete, bound copies of the approved Schematic Design Documents, which shall include a cost estimate.

§ 3.2.13 The Architect shall not proceed with the Design Development Phase as set forth in Section 3.3 until:

- .1 The Architect has received the Owner's written approval of the Schematic Design Documents;
- .2 The Architect has provided the Owner with a written construction cost estimate that is within the Owner's budget for the Cost of the Work, and
- .3 The Architect has received written authorization and direction from the Owner to proceed with the Design Development Phase.

§ 3.2.14 Upon request by the Owner, the Architect shall prepare drawings and participate in making presentations of the Schematic Design to the Board of Trustees of the Minnesota State Colleges and Universities and/or the Project's college or university

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the Owner's budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval that conform to the approved Schematic Design Documents, the Owner's Design Standards, the schedule accepted by the Owner, and the Cost of the Work. 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 specifications that further describe major materials and systems and establish 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 no later than the number of calendar days following authorization to proceed with the Design Development Phase per Exhibit A, 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.

§ 3.3.4 The design of structural, mechanical, electrical, civil, and landscape systems shall be performed by qualified engineers and architects in the employ or under the direction of the Architect. Direct communications are hereby authorized between the Architect's consultants and the Owner and/or Owner's Representative. The Architect shall be informed regarding the substance of any such communication. The Owner and Owner's Representative shall not direct the Architect's consultants. When this Section 3.3 calls for the Architect to conform to the Owner's requirements regarding Schematic Design, Design Development and Construction Documents, and the Architect is of the opinion that such requirements are internally inconsistent or inconsistent with other obligations of the Architect in this Agreement, the Architect shall present the inconsistency to the Owner for resolution.

§ 3.3.5 A roof design consultant designated by the Owner will be assigned to and become an integral part of the Architect's design team. The Architect's fee shall include the fee and reimbursables of the roof design consultant. Direct communications are hereby authorized between the designated roof design consultant and the Owner and/or Owner's Representative. The Architect shall be informed regarding the substance of any such communication. The Owner and Owner's Representative shall not direct the Architect's consultants.

§ 3.3.6 As part of the Design Development Documents, the Architect shall prepare, for acceptance by the Owner, (1) documents (in reasonable detail) to establish the space arrangement, building masses, and building materials; (2) floor plans (including the built-in equipment layout); (3) plans delineating the structural, civil, mechanical and electrical systems; (4) plans for the utility layouts and connections; (5) plans for the major building sections; (6) plans for site utility and landscape work; (7) plans/drawings of building details; and (8) written estimates of the cost of each of the major building systems. The Owner shall accept, or the Architect shall modify at the Owner's request the Design Development Documents until the same are accepted by the Owner.

§ 3.3.7 The Architect shall meet at least once, and more often if required, with representatives of the State Building Code and Standards Division, and with local building and fire code officials, to identify and correct all non-compliance(s).

§ 3.3.8 The Architect shall at appropriate time(s) meet with the Owner and the Owner's Representative to discuss Design Development considerations currently being evaluated and Design Development conformance to the Owner's Design Standards.

§ 3.3.9 As required by the Owner, the Architect shall forward sets of the Design Development Documents and cost estimates to the Owner and the Owner's Representative, and sets of the Design Development Documents to review consultants designated by the Owner and/or the Owner's Representative. Each set shall include architectural, structural, mechanical, electrical, civil, and landscape systems that appropriately describe the Project construction.

§ 3.3.10 The Architect shall not proceed with the Construction Documents Phase until:

- .1 The Architect has received the Owner's written acceptance of the Design Development Documents,
- .2 The Architect has provided the Owner with an estimated bid date and a written construction cost estimate that is within the Owner's budget for the Cost of the Work, and
- .3 The Architect has received written authorization and direction from the Owner to proceed with the Construction Documents Phase.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's (1) written approval of the Design Development Documents, (2) written authorization to start, and (3) written authorization of any adjustments in the Project requirements and the Owner's 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

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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 develop and prepare (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 General Construction Contract Conditions. The Architect shall also compile a project manual that includes the General Construction Contract Conditions 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 no later than the number of calendar days following authorization to proceed with the Construction Documents Phase per Exhibit A, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's acceptance.

§ 3.4.6 The Architect shall provide Construction Documents that conform to the accepted Design Development Documents, the Owner's Design Standards, all schedules accepted by the Owner, and the Cost of the Work. At the Owner's request, the Architect shall modify the Construction Documents until such documents are acceptable to the Owner.

§ 3.4.7 The Architect shall furnish Drawings and Specifications to, and receive written approval from, applicable state and local officials. In addition, the Architect shall meet at least once, and more often if required, to review the design with representatives of the State Building Code and Standards Division, the State Department of Health when applicable, and with local building and fire code officials. The Architect shall be responsible for Project design conformance to all applicable statutes and codes, including variance thereof. When the Architect is of the opinion that such statutes and codes, including variances, are internally inconsistent or inconsistent with other obligations of the Architect in this Agreement, the Architect shall present the inconsistency to the Owner for resolution. If applicable statutes and/or codes are changed by state and/or local officials during the pendency of design or construction of the Project and the Architect reasonably relied upon the language of the pre-change statute and/or rule and the effect of the change adversely affects the Architect financially in a substantial manner, then the Architect may apply to the Owner for the Owner's consideration of the effect of the change and possible change to the compensation of the Architect.

§ 3.4.8 The Architect shall at appropriate time(s) meet with the Owner and the Owner's Representative to discuss Construction Document considerations currently being evaluated and Construction Document conformance to the Owner's Design Standards.

§ 3.4.9 As required by the Owner and/or the Owner's Representative, the Architect shall forward sets of the Construction Documents to the Owner and the Owner's Representative and to review consultants designated by the Owner and/or the Owner's Representative. Each set shall include architectural, structural, mechanical, electrical, civil, and landscape systems which completely describe the Project construction.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. 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.

§ 3.5.1 The Architect shall not proceed with the bidding phase, whether competitive or negotiated, until:

- .1 The Architect has received the Owner's written acceptance of the Construction Documents;
- .2 The Architect has provided the Owner and the Owner's Representative with a final written construction cost estimate that is within the Owner's budget for the Cost of the Work; and
- .3 The Architect has received written authorization and direction from the Owner to proceed with the

bidding phase.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements, proposed Contract Documents, and such other documents as the Owner may designate.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders as necessary;
- .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;
- .4 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
- .5 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 the General Construction Contract Conditions. Such administration shall be consistent with any agreement between the Owner and the Owner's Representative. If the Owner and Contractor modify the General Construction Contract Conditions, those modifications shall be incorporated into this Agreement, and to the extent any such modification affects the Architect's services under this Agreement, the Architect's compensation and schedule shall be adjusted pursuant to Article 4. To the extent of any conflict between the terms of this Agreement, the above-referenced agreement between the Owner and the Owner's Representative, and the General Construction Contract Conditions, the interpretation most favorable to the Owner shall control.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and the Owner's Representative 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, the Architect's responsibility to provide Construction Phase Services commences with the Owner's issuance to the Contractor of a notice to proceed, and shall terminate at the later to occur of the date that is 365 days after the Architect's issuance to the Owner of the final Certificate for Payment or upon the Architect's completion of services (such as ten month pre-warranty "walk through" and other typical post substantial completion

services). Provided, however, the Architect shall not issue the final Certificate of Payment until the Owner confirms, in writing, that the Contractor has satisfied all of the conditions under Section 9.10 of the General Construction Contract Conditions.

§ 3.6.1.4 The Architect shall not cause changes in the Work without the written approval of the Owner. Should the Architect cause changes in the Work without the Owner's approval any costs incurred due to these changes or to reinstate the original requirements shall, at the discretion of the Owner, be paid by the Architect.

§ 3.6.1.5 The Architect shall review and answer properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect shall consult with the Owner and the Owner's Representative, as the Architect, Owner and Owner's Representative mutually consider necessary, regarding such requests and the responses thereto. The Architect shall provide the Owner and the Owner's Representative a copy of all requests and responses.

§ 3.6.1.6 If deemed appropriate by the Architect, or the Owner or the Owner's Representative, the Architect shall prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

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

§ 3.6.1.8 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.

§ 3.6.1.9 The Architect shall render in writing within a reasonable time an opinion as to claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's opinions on matters relating to aesthetic effect shall be the final determination if consistent with the intent expressed in the Contract Documents and approved by the Owner.

§ 3.6.1.10 The Architect shall before the beginning of construction conduct one pre-construction conference, and thereafter construction progress meetings, and shall prepare and distribute appropriate records and minutes of such conferences and meetings.

§ 3.6.1.11 The Architect together with consultants as required shall after the beginning of construction of the Project, but prior to beginning of specific parts of the Project, administer pre-installation conferences dealing with the following specific parts:

See Section A.2.6.4 in Exhibit A.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect, along with its consultants, shall conduct on-site inspections of the Project construction and hold construction progress meetings at intervals appropriate to the stage of construction, or as directed by the Owner or the Owner's Representative, 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. The Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and prepare and forward to the Owner and the Owner's Representative a field report for each on-site inspection within three working days after the completion of each such visit, with such report being in the form of AIA Form G711 or any equivalent form. The Architect shall also 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.

§ 3.6.2.2 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.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner, the Owner's Representative 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.

§ 3.6.2.4 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. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Contractor.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in General Construction Contract Conditions, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.2.6 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by the Owner and the Owner's Representative with the Architect's consultants are hereby authorized. The Architect shall be informed regarding the substance of any such communication. The Owner or the Owner's Representative shall not direct the Architect's consultants.

§ 3.2.6.7 The Architect shall 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 or 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, which rights do not give rise to a duty or responsibility of the Owner to the Architect or any other individual or entity.

§ 3.6.2.8 Upon 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 the 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 observations at the Project site and evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. 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 at the time of certification.

§ 3.6.3.2 The issuance of a Certificate for Payment shall be a representation that the Architect has confirmed that the Contractor has submitted all required data and information with its Application for Payment, but 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, 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 and stamp each such application on the date it was received by the Architect.

§ 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 Architect-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 the Contract Documents, and further 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, and such drawings and submittals must 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, in consultation with the Owner's Representative, prepare a list and maintain a record of submittals and copies of submittals to be supplied and actually supplied by the Contractor in accordance with the requirements of the Contract Documents. The Architect shall advise the Owner and the Owner's Representative, in writing, if the Architect becomes aware that the Work is proceeding in the absence of shop drawings and submittals that have been reviewed and approved, or are required to be reviewed and approved, in accordance with 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. For all other changes in the Work the Architect must obtain the Owner's written approval and provide written notification to the Owner's Representative. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for review by the Owner's Representative and the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications that describe Work to be added, deleted or modified.

§ 3.6.5.2 The Architect shall prepare and maintain (1) a continuous listing of all Change Orders, both those proposed and those executed, (2) a second continuous listing of all Construction Change Directives, and (3) a third continuous

listing of all approved minor changes in Work, and, in addition, shall provide copies of such records to the Owner and the Owner's Representative.

§ 3.6.5.3 The Architect shall promptly review requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or the Contract Time.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in an adjustment in any schedule or the Cost of the Work, the Architect shall make a recommendation to the Owner and the Owner's Representative, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a change in services of the Architect. With the Owner's approval and notification to the Owner's Representative, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 3.6.5.5 The Architect shall maintain records relative to changes in the Work and within 60 days after the final Substantial Completion of construction of the Work, the Architect shall deliver to the Owner one complete set of clearly titled Project Record Documents Drawings and Specifications as follows:

- .1 as to the Drawings, one complete set of full sized prints;
- .2 as to the Specifications, one bound and one unbound Project Manual, suitable for reproduction;
- .3 and as to electronic records, two complete sets of electronic medium of all Project Record Documents in the form as required by Section A.2.6.6 of Exhibit A.

Project Record Drawings and Specifications are the original Project Drawings and Specifications revised to reflect all bidding phase addenda, all executed Change Orders to the Project construction contract, and all minor changes in the Work authorized by the Architect.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall (1) conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, (2) issue Certificates of Substantial Completion, (3) receive from the Contractor and forward to the Owner and the Owner's Representative, for the Owner's and the Owner's Representative's review and the Owner's records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, (4) and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with all of the requirements of the Contract Documents. The Architect shall notify the Owner and Owner's Representative in writing when, in the Architect's opinion, construction of the Project is substantially complete, and then when fully complete including all punch list and closeout items.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and/or the Owner's Representative 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 and the Owner's Representative 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 and the Owner's Representative 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 one year from the date of Substantial Completion, the Architect shall, without additional compensation, (1) inspect the Project site, (2) provide assistance in enforcing any warranty issued by the Contractors, and (3) conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 Ten months following Substantial Completion the Architect, the Owner, and the Owner's Representative shall conduct an on-site walk-through review of the Project structure, operation, and performance. The Architect shall

promptly inform the Contractor, the Owner and Owner's Representative, in writing, of the results of this review and shall make appropriate recommendations.

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 11.2, or (2) ordered by the Owner pursuant to Section 4.3, in which case the Owner shall compensate the Architect as provided in Section 11.3 and adjust the schedule for performance of 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 (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming		
§ 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		
§ 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		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		
§ 4.1.15 As-Constructed Record drawings		
§ 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™-2007)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™-2007)		
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)		

§ 4.1.28 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.

§ 4.2 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.

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§ 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.

§ 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 with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .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 the 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;
- .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 Section 6.7;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals; or
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;

If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this 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 the Basic Services and Additional Services, and (2) provide an estimate of the probable cost of such services and probable impact, if any, on the schedules. The Architect shall not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization shall either (i) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (ii) 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 this Agreement.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom;

- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier, or
- .7 Providing consultation concerning replacement Work resulting from fire or other causes during the construction phase that is not related to the Instruments of Service

If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this Section 4.3.2 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 the Basic Services and Additional Services, and (2) provide an estimate of the probable cost of such services and probable impact, if any, on the Architect's and Contractor's schedules. The Architect shall not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization shall either (i) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (ii) 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 this Agreement.

(Paragraphs deleted)

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 improvements that was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information made available to the Architect from the Owner's records. The Architect shall not rely on such information without independently confirming that, in the Architect's professional judgment and subject to the duty of care contained in Section 2.2, the information is reliable.

§ 5.2 The Owner shall maintain the budget for the Project and shall consult with the Architect regarding the need to increase or decrease the Owner's budget for the Cost of the Work as defined in Section 6.1.

§ 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 services by anyone other than the Owner and the Owner's Representative.

§ 5.4 The Owner shall, upon the Architect's reasonable request, furnish (1) surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project to the extent such physical characteristics, legal limitations and utility locations can be determined by review of readily available records, observations of surface conditions, or other standard surveying practices, and the Owner agrees that a survey is needed, and (2) 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, not otherwise provided by the Contractor. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall, upon the Architect's reasonable request and the Owner's determination that the Architect needs the requested services, 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, subject to Section 3.1.2, coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner may 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 applicable 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 and the Owner's Representative of the requirements of such tests, and consult with the Owner and the Owner's Representative in selecting and ordering services from consultants who provide such tests, inspections and reports.

(Paragraph deleted)

§ 5.9 The Owner shall provide 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 Instruments of Service, provided that the Owner shall not become responsible for and the Architect shall not be released from liability for such faults for defects by reason of any failure of the Owner to discover or report any such faults for defects.

§ 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 any performance by the Contractor under the Construction Documents, including but not limited to requests for information and change order proposals that may affect the design or cost of the Project or may require approval or other actions 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 Construction Contract Conditions.

§ 5.12 The Owner shall provide the Architect access to the Project 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.

§ 5.13 Whenever this Agreement, the General Construction Contract Conditions, or any other Construction Document refer to the knowledge of the Owner, facts known to the Owner, or documents or information in the possession of the Owner, such references shall be limited to matters actually known by or items actually in the possession of the Owner.

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 the 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 may include reasonable contingencies for design, bidding and price escalation; make reasonable judgments about and recommend what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to determine and recommend reasonable adjustments in the program and scope of the Project; and to recommend that the Owner include in the Contract Documents alternates that have been approved by the Owner. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. The Architect

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shall prepare its estimates of the Cost of the Work in a format to be established by the Owner with line items based on the standard Construction Specifications Institute divisions of the Work.

§ 6.3.1 If the Owner retains a consultant to provide preconstruction services during the design phases of the Architect's services, including cost estimating services, the Architect shall cooperate with such consultant, which such cooperation shall include:

- .1 providing 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 the Project program, design, schedule and budget; and
- .4 incorporating recommendations approved by the Owner into the design or Construction Documents.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Construction Documents have been accepted by the Owner for bidding, through no fault of the Architect, the Owner shall consider adjustments to the Owner's Budget for the Cost of the work in order to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 In the preparation of construction cost estimates as required by this Agreement, it shall be the responsibility of the Architect to design the Project so that such estimates do not exceed the construction cost Owner's Budget for the Cost of the Work. Whenever the Architect finds, in its opinion, that the cost of the construction Cost of the Work will exceed the construction cost Owner's Budget for the Cost of the Work, the Architect shall immediately stop work and notify the Owner and the Owner's Representative in writing including any recommendations of the Architect for changes in the size and/or quality of the Project necessary to keep the estimated cost of construction Cost of the Work within the construction cost Owner's Budget for the Cost of the Work. If so directed by the Owner in writing, the Architect shall, at no cost to the Owner, revise or redraft any and all documents necessary for the construction of the Project so as to bring the estimated cost of construction within the Construction Cost. The Owner shall cooperate with the Architect in making necessary adjustments to the Project's size and/or quality if necessary to bring the estimated cost of construction Cost of the Work within the Construction Costs Owner's Budget for the Cost of the Work.

§ 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 may

- .1 give written approval of an increase in the Owner's 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, oversee the revision of the Project program, scope, and/or quality as required to reduce the Cost of the Work and rebid the Project; 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 (1) modify, subject to the Owner's written acceptance, 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, (2) provide the services called for in Article 3, and (3) pay the printing and photocopy costs related to modification and rebidding. The Architect's modification of the Construction Documents, the rebidding or renegotiation, and the payment of printing and photocopy costs shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 INSTRUMENTS OF SERVICE

§ 7.1 Drawings, specifications, and other documents including those in electronic form prepared by the Architect and the Architect's consultants are Instruments of Service as such term is used in this Agreement. The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party has the right to transmit such information for use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications. The Architect and the Owner shall jointly own and possess the copyrights for the Instruments of Service. The Owner and the Architect may not, subject to the authorizations

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contained in this Section 7.2, use any portion or part of the Instruments of Service for any purpose other than the Project without the written consent of the other party, which such consent may be contingent upon the payment of a fee. Provided, however, (1) the Architect may, without the need for the Owner's consent, use those portions and parts of the Instruments of Service that are not unique to the Project and are commonly included in buildings and structures of a nature similar to structures and buildings that are part of the Project, and (2) the Owner may, without the need for the Architect's consent, use the any portion or all of the Instruments of Service in conjunction with its operation and maintenance of the structures and buildings that are part of the Project. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Owner.

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

(Paragraph deleted)

§ 7.4 For purposes of this Article 7, the project shall be the original Project and any and all modifications, expansions and additions thereto

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 in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the 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 Construction Contract 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 8.1.2 shall survive completion of Architect's services under this Agreement or the termination of this Agreement.

(Paragraph deleted)

§ 8.2 MEDIATION

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

§ 8.2.2 The Owner and Architect shall, upon mutual agreement, endeavor to resolve claims, disputes and other matters in question 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 any other appropriate demand for binding dispute resolution or litigation but, in such event, mediation shall proceed in advance of dispute resolution proceedings or litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall

be enforceable as settlement agreements in any court having jurisdiction thereof if the parties to the mediation agree to such enforcement and such agreement is documented in the mediators report.

(Paragraphs deleted)

§ 8.3 ARBITRATION

§ 8.3.1 Upon mutual agreement the Owner and the Architect may select non-binding arbitration as the method for dispute resolution in this Agreement, which, unless the parties mutually agree otherwise, shall be conducted in accordance with the American Arbitration Association Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question. The party filing a notice of demand for arbitration must assert in the demand all claims, disputes, or other matters then known to that party on which arbitration is permitted to be demanded.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall only be enforceable in accordance with applicable law in any court having jurisdiction thereof if the parties to the arbitration agree to such and such agreement is documented in the arbitrator's decision.

§ 8.3.3 The award rendered by the arbitrator(s) shall only be final, and binding if the parties to the arbitration agree to such and such agreement is documented in the arbitrator's decision.

§ 8.3.4 CONSOLIDATION OR JOINDER

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

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

(Paragraph deleted)

§ 9.2 At any time during the term of this Agreement the Owner may terminate the Project entirely or suspend it for an indefinite period of time upon seven days written notice to the Architect. If the Owner terminates or suspends the Project without cause for more than 30 consecutive days, then the Architect shall be compensated for services performed prior to notice of such termination or suspension. If the Project is resumed, the Architect's fees for the remaining services and the time schedules shall be negotiated.

§ 9.3 If the Owner suspends the Project for more than 180 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, and such termination shall be effective as of the noted date unless the Project is restarted prior to such date.

§ 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 and the cause for such termination is not corrected within such 30 day time period.

§ 9.5 The Owner may, at its sole option and discretion and for cause or without cause, terminate this Agreement upon not less than seven days' written notice to the Architect.

§ 9.6 In the event of termination or suspension not the fault of the Architect, the Architect shall be compensated for services performed prior to such termination or suspension, together with Reimbursable Expenses incurred prior to such termination or suspension that are then due and mutually agreed to. The Architect shall not be entitled to any anticipated profits or consequential damages.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

§ 9.9 If upon termination the Owner incurs additional cost as a result of the Architect's failure to perform under this Agreement the Architect shall be liable for the full amount of such additional costs. The Owner shall be entitled to withhold from any payment due to the Architect an amount which the Owner reasonably believes may be its additional costs until such time as the exact amount of such additional cost is determined and the Architect has rendered payment thereof. The Architect shall only be entitled to payment for services pursuant to this Agreement performed as of the date of notice of termination.

§ 9.10 The Owner may, at any time during the term of this Agreement, reduce the scope of the Project upon seven days written notice to the Architect. Fees for work completed as of the time of the notice of reduction shall be determined by the terms of this Agreement at the time of the notice. Fees for the remainder of the work shall be set by amendment to this Agreement.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Minnesota. Except as otherwise provided in this Agreement, all legal and equitable proceedings, controversies, or disputes arising from this Agreement shall be venued in the District Court of Ramsey County, State of Minnesota.

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

§ 10.3 The Architect binds itself, its agents, successors, assigns and legal representatives to this Agreement. The Architect shall not assign nor transfer all or any part of this Agreement without the written consent of the Owner.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 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 except that the Architect shall cooperate and work with the Owner's Representative as provided in the General Construction Contract Conditions and in the agreement between the Owner and the Owner's Representative.

§ 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 Project 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 consent of the Owner in each instance.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate a state or federal law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 10.10 Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

§ 10.11 Subject to the provisions of Minn. Stat. §§ 337.01 and 337.02, the Architect shall indemnify, save, and hold the Owner, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the Owner, arising from the performance of this Agreement by the Architect or Architect's agents or employees to the extent caused by or contributed to by the negligence of the Architect or its agents or employees. This clause shall not be construed to bar any legal remedies the Architect may have for the Owner's failure to fulfill its obligations pursuant to this Agreement.

§ 10.12 The Architect must comply with the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statute, as it applies to all data provided by the Owner in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Architect in accordance with this Agreement. The civil remedies of Minn. Stat. §13.08, apply to the release of the data referred to in this Agreement by either the Architect or the Owner. In the event the Architect receives a request to release any data referred to in this Section 10.12, the Architect must immediately notify the Owner, and the Owner will give the Architect instructions concerning the release of the data to the requesting party before the data is released.

§ 10.13 The Architect will receive a written notice to proceed issued by the Owner. This Agreement shall not be valid or effective, there shall be no liability upon the Owner for payment, and the Architect shall have no obligation to commence work until the notice to proceed is issued.

§ 10.14 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, Invoice, Payment Applications, Requests for Information, and Document Management related to the Project. 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.

§ 10.15 The Architect agrees that during the term of this Agreement it will comply with all applicable provisions and requirements contained in the Minnesota Human Rights Act contained in Chapter 363A of the Minnesota Statutes.

§ 10.16 Minn. Stat. §363A.36 provides that for all contracts estimated to be in excess of \$100,000 with respondents who had more than 40 full-time employees at any time during the previous 12 months in the State of Minnesota must have an affirmative action plan approved by the Minnesota Commissioner of Human Rights. In order to comply with such requirement the Architect must supply the Owner with one of the following items:

- .1 A copy of the Architect's current certificate of compliance issued by the Minnesota Commissioner of Human Rights;

- .2 A statement certifying that the Architect has a current certificate of compliance issued by the Minnesota Commissioner of Human Rights; or
- .3 A statement certifying that the Architect has not had more than 40 full-time employees in Minnesota at any time during the previous 12 months.

§ 10.17 The Architect agrees to comply with the provisions contained in Minn. Stat. §137.36, which requires the Architect to (1) pay any consultant that the Architect engages to perform any of the services to be performed under this Agreement within 30 days of the Architect's receipt of payment from the Owner for undisputed services provided by the consultant, and (2) pay interest of 1.5 percent 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 payment 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.

§ 10.18 The Architect shall supply and make available to Owner either its social security number or its federal employer identification number and its Minnesota tax identification number. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations, and may be used in the enforcement of federal and state tax laws which could result in action to require the Architect to file tax return(s) and to pay delinquent tax liabilities. The Architect shall provide the information required under this Section 10.18 by completing and delivering to the Owner a State of Minnesota Minnesota State Colleges and Universities Data Disclosure Information sheet in the form attached hereto as Exhibit B, and sending an executed original to the Minnesota New Hire Reporting Center, P.O. Box 64212, St. Paul, MN 55164-0212.

§ 10.19 The word Architect is used universally herein to identify the organization named on page one of Exhibit A.

§ 10.20 The Architect acknowledges being aware of and reading the provisions contained in Minn. Stat. §15.43, and further acknowledges and agrees that it has not been involved and will not be involved in any of the prohibited activities delineated in such statute, and that any misrepresentation as to the occurrence or existence of any of such prohibited activities or the participation in any of such prohibited activities will constitute a material default under this Agreement that will entitle the Owner to terminate this Agreement.

§ 10.21 The Architect shall design the Project in a manner that it will comply with the current understanding and interpretation of the Americans with Disabilities Act of 1990 contained in 42 U.S.C. Sections 12101 through 12213 and all rules, regulations and guidelines that implement and apply to such act.

§ 10.22 The Architect represents and agrees that any individual that performs any work under this Agreement, either as the Architect, a direct employee of the Architect, or under a contract with the Architect, will possess all licensures required by Minnesota law and any other necessary licensures for the performance of such work.

ARTICLE 11 COMPENSATION

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

(Paragraphs deleted)

See Exhibit A

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Paragraphs deleted)

See Exhibit A

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

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section, 11.1, 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0%), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20%)
Design Development Phase	Twenty-five	percent (	25%)
Construction Documents Phase	Thirty	percent (	30%)
Bidding or Negotiation Phase	Five	percent (	5%)
Construction Phase	Twenty	percent (	20%)
<hr/>			
Total Basic Compensation	One hundred	percent (	100%)

Partial payments for a), b), c), d), and e) above may be made monthly with the amount of the payment prorated over the anticipated work required to complete a particular phase. In no case shall the total of the partial payments for a particular phase exceed the fee for that phase as shown above.

§ 11.5.1 For the purposes of this Article 11 only, construction contract Change Orders shall be divided into two groups: (1) Change Orders resulting solely from change in Project Scope (hereinafter called "Scope Change Orders"); and (2) all other Change Orders (hereinafter called "Other Change Orders"). Concerning additional fees for services pertaining to construction contract Change Orders, the Architect shall receive additional fees only for services pertaining to Scope Change Orders and then only if either of the following conditions exist:

- a) The construction contract award amount (as shown on the Agreement for Construction Services for Advertised Bid Project, Form MnSCU 110) equaled or exceeded the ninety percent (90%) of the Owner's budget for the Cost of the Work (the "Lower Limit"), or
- b) The construction contract award amount is less than the Lower Limit and Scope Change Orders have been processed which exceed the Lower Limit; the Architect shall not receive any additional fees for services pertaining to Scope Change Orders prior to the Lower Limit being exceeded.

Under no circumstances shall the Architect receive any additional fees for any work pertaining to Other Change Orders. Architect fees permitted by this Section 11.5.1 shall be negotiated.

§ 11.5.2 The Architect shall not receive any additional fee for redesign and rebidding work if rebidding is required pursuant to Section 6.6.4.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. 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 set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(Paragraphs deleted)

See Exhibit A (As applicable)

(Table deleted)

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Payments on account of Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include only certain 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 Owner's employees;
- .2

(Paragraphs deleted)

Owner requested printing, reproductions, plots and standard form documents that are not already included in and required to be supplied by the Architect under this Agreement;

.3 Renderings, models, mock-ups, professional photography, and presentation materials requested by the
(Paragraphs deleted)

Owner that are not already included in and required to be supplied by the Architect under this Agreement;

The Architect shall provide complete documentation, including copies of all invoices – paid by the Architect, for those expenses that are to be reimbursed.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants without any mark-up.

(Paragraphs deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Upon presentation of the Architect's invoice, payments by the Owner shall be made in accordance with the provisions contained in Minn. Stat. § 16a.124 Subd. 3, 4, 5 and 8.

(Paragraph deleted)

§ 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, which such accounting and control systems must be in a form acceptable 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 the Project, including but not limited to accounting records, written policies and procedures, subcontract files (excluding subcontracts, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets, correspondence, Change Order files (including but not limited to 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, 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 but not limited to 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 and shall provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

(Paragraphs deleted)

§ 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 any applicable law, provided, however, that if a Claim is asserted during said 12 year period then the Architect shall retain all of such Records until the Claim has been resolved.

§ 11.10.4.3 The Architect shall require all entities to whom it made payments for services provided under this Agreement to comply with the provisions of Section 11.10.4 by insertion of the requirements contained in such section in any written agreement between the Architect and such entity.

§ 11.10.4.4 The Owner and its accounts, auditors and agents shall be provided adequate and appropriate work space in order to conduct audits authorized by Section 11.10.4, and the Owner and its accountants, auditors and agents agree to perform all of their work in the provided space and no where else in the Architect's offices, to not interact with the Architect's employees, and to not otherwise unreasonably interfere with or disrupt the work of Architect's employees.

§ 11.10.4.5 If an Audit discloses overpricing or overcharges (of any nature) by the Architect to the Owner, then the Architect shall reimburse such overpricing or overcharges to the Owner, and if such overpricing or overcharge is in excess of 1% of the total contract billings the Architect shall also reimburse the Owner for the cost of the Audit. Any adjustments and/or payments that must be made by the Architect to the Owner as a result of any Audit shall be made within a reasonable period of time not to exceed 30 days from the Owner's presentation of its findings to the Architect.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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 Electronic Format as amended by the Owner and the Architect for this Project, including all attachments.
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
(Paragraph deleted)
- .3 The General Construction Contract Conditions, which the Architect acknowledges that it has received a copy of, read, understands, and agrees to be bound by the provisions thereof that apply to the Architect.
- .4 AIA Document B101-2007 Exhibit A Initial Information, that is attached to this Agreement.
- .5 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

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

OWNER

(Signature)

 Printed name and title on Exhibit A
(Printed name and title)

ARCHITECT

(Signature)

 Printed name and title on Exhibit A
(Printed name and title)

Additions and Deletions Report for AIA[®] Document B101[™] – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:54:39 on 02/02/2010.

PAGE 1

AGREEMENT made as of the ~~the~~ day of ~~in the year~~

(In words, indicate day, month and year.)

First date in the signature page in the attached AIA Document B101-2007 Exhibit A
("Exhibit A")

...

(~~Name, legal status, address and other information~~)

See Exhibit A.

...

(~~Name, legal status, address and other information~~)

See Exhibit A.

...

Centennial Student Union 2011 Ballroom Renovation
Minnesota State University, Mankato

PAGE 2

§ 1.1 This Agreement is based on the ~~Initial Information~~ information set forth in this Article 1 and in ~~optional~~ Exhibit A, ~~Initial Information~~ ("Initial Information"):

(~~Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.~~)

...

.1 Commencement of construction date: See Exhibit A

.2 Substantial Completion date: See Exhibit A

§ 1.3 The Owner and Architect may reasonably 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.

§ 1.4 This Agreement shall be effective upon the date that the final required signature is obtained by the Owner, or the date of the issuance of a notice to proceed, whichever is later and shall remain in effect until all obligations have been satisfactorily fulfilled. For other time parameters see Section A.1.10 in Exhibit A

§ 2.1.1 The Architect shall provide its services directly or through consultants retained and paid by the Architect. The Architect's consultants are identified in Exhibit A. The Architect shall not change the consultants listed in Exhibit A, 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 ensure that its consultants abide by all of the terms and conditions of this Agreement and, when applicable, are duly licensed and authorized to transact its business in the State of Minnesota.

§ 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 and Procedures for Construction and Exterior Design Standards that may exist as of the date of this Agreement ("Owner's Design Standards").

§ 2.2.2 Whenever 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 contained in Section 2.2.

§ 2.2.3 The Architect shall promptly review information provided by the Owner, correlate its review and information obtained by the Architect from other sources, and promptly report to the Owner any errors, inconsistencies or omissions that may exist in such information.

§ 2.2.4 Subject to the Architect's standard of care contained in Section 2.2, 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 represents and acknowledges that it has visited the site and reviewed the Owner's requirements, and that all schedules prepared for and compensation to be supplied for the Project are appropriated.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Project, which such representative must be acceptable to the Owner. The Architect may not, and shall not, change such 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. The Owner, upon written disclosure by the Architect, will consider situations where the Architect believes that the appearance, or the potential for the appearance, but not the actuality, of a conflict of interest exists.

2.5 INSURANCE

§ 2.5.1 The Architect shall, at its sole cost and expense, maintain the insurance specified in this Section 2.5 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. Such insurance shall be placed with insurers that have an A.M. Best rating of A-(minus) and a Financial Size Category of Class VII, or better, and are licensed to do business in the State of Minnesota. The Architect shall be solely responsible for payment of all insurance premiums.

.1 General Liability

The Architect shall maintain Commercial General Liability insurance to cover claims that may arise from operations under this Agreement, whether such operations are by the Architect, a consultant, or anyone directly or indirectly employed under this Agreement. Unless otherwise specified, such insurance minimum amounts shall be as follows:

\$2,000,000 - per occurrence

\$2,000,000 - annual aggregate applying per project or location

\$2,000,000 - annual aggregate applying to Products/Complete Operations
\$50,000 - Fire Damage (any one fire)
\$5,000 - Medical Expense (any one person)

The following coverage shall be included in such insurance:

Premises and Operations Bodily Injury and Property Damage
Personal Injury and Advertising Injury
Products and Completed Operations Liability
Contractual Liability as provided in Insurance Services Office (ISO) form CG 00 01 10 01 or its equivalent, and as applicable
Pollution exclusion with standard exception as per Insurance Services Office (ISO)
Commercial General Liability Coverage Form – CG 00 01 10 01 or equivalent
Independent Contractors (let or sublet work)
Host Liquor Liability
Waiver of Subrogation in favor of the Owner

.2 Automobile Liability

The Architect shall maintain Business Automobile Liability coverage for liability arising out of the operations, use or maintenance of all owned, non-owned, and rented vehicles. Unless otherwise specified, the insurance minimum amounts shall be as follows:

\$2,000,000 - per occurrence Combined Single limit for Bodily Injury and Property Damage

The following coverages shall be included in such insurance:

Owned, Hired and Non-owned
Waiver of Subrogation in favor of the Owner

.3 Workers' Compensation

The Architect shall provide workers' compensation insurance for all employees and shall require any consultant to provide workers' compensation insurance in accordance with the statutory requirements of the State of Minnesota, and shall include:

Coverage B. Employers' Liability including Stop Gap Liability for monopolistic states, at limits of not less than \$100,000 bodily injury by disease per employee; \$500,000 bodily injury by disease aggregate; and \$100,000 bodily injury by accident.

Coverage C. All States coverage.

If applicable, USL&H, Maritime Voluntary, and Foreign coverage.

A waiver of subrogation in favor of the Owner.

.4 Professional Liability

The Architect shall maintain professional liability insurance covering negligent acts, errors or omissions, arising out of performance of, or the failure to perform, any services included in this Agreement. Additionally, the Architect shall require its consultants and their sub-consultants, if any, to maintain applicable professional liability insurance. Unless otherwise specified, the minimum amounts for such insurance shall be as follows:

Minimum limit of liability of \$2,000,000 per claim.

\$2,000,000 annual aggregate.

Any deductible will be the sole responsibility of the Architect and may not exceed \$50,000 without the written approval of the Owner. If the Architect desires authority from the Owner to have a deductible in a higher amount, the Architect shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting their most current audited financial statements, so that the Owner can ascertain the ability of the Architect to cover the deductible from the Architect's own resources.

If the policy is claims made, it shall contain the following language:

Prior acts or retroactive date of coverage shall not be subsequent to the effective date of this Agreement; and Architect shall carry such insurance for a period of at least five (5) years, if commercially available, otherwise a minimum of three (3) years, after final substantial

completion or earlier termination of this Agreement. If the professional liability coverage is cancelled, replaced with a policy with different terms and conditions (e.g., retroactive date) or non-renewed by either the insured or the insurer, then extended reporting period coverage (or equivalent) must be purchased to fulfill this requirement.

.5 Valuable papers.

The Architect shall maintain 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.

.6 Umbrella Liability.

The Architect may use an umbrella or excess liability policy to supplement or provide any of the insurance policy limits required by this Agreement. The umbrella or excess liability policy shall be follow-form of the required coverage or provide, at a minimum, the coverage available on the required insurance policies.

§ 2.5.2 Additional Insurance Conditions

- .1 The policies of insurance to be maintained by the Architect shall be the primary and non-contributory to any other valid and collectible insurance available to the State of Minnesota and the Board of Trustees of the Minnesota State Colleges and Universities, to include the Project's College or University, with respect to any claim arising out of this Agreement.
- .2 Insurance companies for all policies shall waive the right to assert immunity of the Owner as a defense to any claims made and endorsements to policies or the certificate shall indicate this waiver.
- .3 The requirements contained in this Section 2.5 establishes minimum insurance requirements. It is the sole responsibility of the Architect to determine the need for and to procure additional insurance that may be needed in connection with this Agreement.
- .4 Certificates of Insurance acceptable to the Owner shall be submitted prior to commencement of the work under this Agreement and from time to time thereafter upon written request of the Owner for as long as such insurance is required to be maintained under this Agreement. Such Certificates and the insurance policies shall contain a provision that coverage afforded under these policies shall not be cancelled, modified, terminated, allowed to lapse, or be modified in a material way without at least thirty (30) days advanced written notice to the Owner.
- .5 A full-certified copy of any policy and endorsements obtained by the Architect as required above, may be requested by the Owner at any time, and upon such request the Architect shall provide the requested policy or endorsement to the Owner.
- .6 Each such insurance policy, except for the professional liability policy and the worker's compensation policy, shall name the Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota as "Additional Insureds", but only with respect to claims arising out of the Architect's negligence or for the negligence of those for whom the Architect is responsible, by endorsement, ISO Forms CG 20 10 and CG 20 37 or their equivalent.

§ 2.5.3 Waivers of Subrogation

To the extent that loss or damage to property, materials, supplies and equipment is covered by insurance pursuant to the provisions of AIA Document A201 –2007, the General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner ("General Construction Contract Conditions"), the Architect and the Architect's consultants and sub-consultants of all tiers, and the Owner and the Owner's consultants of all tiers waive all rights against each other and against the Contractor and the Contractor's subcontractors of all tiers for loss or damage to said property, materials, supplies and equipment.

§ 2.6 Change in Services

§ 2.6.1 The Architect's services for the Project, including services required of the Architect's consultants, may be changed or modified after execution of this Agreement, without invalidating the Agreement, if approved in advance by the Owner and if mutually agreed in writing, by supplemental agreement. Except for a change due to the fault of the Architect, a change in the Architect's services for the Project shall entitle the Architect to an adjustment in

compensation and Reimbursable Expenses, with such adjustment to be negotiated by the Owner and the Architect and included in the supplemental agreement. Architectural services rendered and expenses incurred, in whole or in part, to correct an error or omission of the Architect shall not be compensated or reimbursed by the Owner and shall be borne solely by the Architect.

§ 2.6.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 A material change in the instructions or acceptances/approvals given by the Owner that necessitate revisions in the Instruments of Service;
- .2 Post Agreement enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service, and which could not reasonably have been foreseen;
- .3 Decisions of the Owner not rendered in a timely manner that impact the cost of the Architect's performance;
- .4 A significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 A material failure of performance on the part of the Owner, the Owner's Representative, or the Owner's consultants or contractors;
- .6 Material preparation for and attendance at a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto; and
- .7 Material change in the information contained in Article 1.1 that is not the result of any of the actions of the Architect or caused by the Architect.

§ 2.7 At the time of the Architect's submission to the Owner for the Owner's review and acceptance of, respectively, the Schematic Design Documents, the Design Development Documents, and the Construction Documents, the Architect shall certify that said documents have been reviewed for deviations from the Owner's Design Standards, and that to the best of the Architect's knowledge no such deviations exist except those for which a variance has been duly granted.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 — General Liability
- .2 — Automobile Liability
- .3 — Workers' Compensation
- .4 — Professional Liability

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and ~~include usual and customary structural, mechanical, and electrical engineering~~ Exhibit A and include structural, mechanical, civil and electrical engineering services and landscape architecture services. Services not set forth in this Article 3 or Exhibit A are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, administer the Project, consult with the Owner, research applicable design criteria, including but not limited to the Owner's Design Standards, attend Project meetings, communicate with members of the Project team ~~and report progress to the Owner~~, issue progress reports to the Owner and generally coordinate and cooperate with the Owner's Representative and the Owner in all matters effecting the Project.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the ~~Owner~~ Owner, the Owner's Representative, and the Owner's consultants. The Architect shall be entitled to reasonably rely on the accuracy and completeness of services and information furnished by the Owner, the Owner's Representative, 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 Architect, based on information provided by the Owner and/or the Owner's Representative.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's ~~approval and the Owner's Representative's acceptance~~ 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 and Owner's Representative's review, for the performance of the Owner's consultants, and for approval of ~~submissions by governmental authorities having jurisdiction over the Project~~. Once ~~approved~~ accepted by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the ~~Architect or Owner~~ Architect. With the Owner's approval, the Architect shall adjust the schedule, if ~~necessary~~ 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 or Owner's Representative's directives or substitutions~~ made without the Architect's approval.

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§ 3.1.6 The Architect shall assist the Owner and the Owner's Representative 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 The Architect shall promptly forward to the Owner and the Owner's Representative copies of all relevant Project correspondence issued or received by the Architect and/or the Architect's consultants.

§ 3.1.8 During each design phase, the Architect shall evaluate the Owner's Design Standards and recommend any variances that should be made thereto or therefrom that the Architect believes will reduce costs, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner, and the Architect shall further recommend any 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.

§ 3.1.9 The Architect shall notify the Owner and the Owner's Representative, in writing, of any other information needed for the Project that is not included in or to be provided under this Agreement.

§ 3.1.10 The Owner is not responsible for identifying what information, survey services, or reports that are required or needed for the Project.

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§ 3.2.1 The Architect shall promptly review the program and other information furnished by ~~the Owner~~ the Owner or the Owner's Representative, 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 Design Standards, Owner's program, schedule, Owner's budget for the Cost of the Work, Project 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 promptly notify the Owner and the Owner's Representative 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 the Owner's Representative 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.

...

§ 3.2.5 Based on the Owner's approval of the preliminary design, and issuance of a notice to proceed, 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. The Architect shall exercise the level of care specified in Section 2.2 in its preparation of the Schematic Design Documents, and such documents shall conform to the Owner's program, Owner's Design Standards, the schedule accepted by the Owner, and the Cost of the Work as such term is defined in Section 6.1

§ 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 Owner may obtain other environmentally responsible design services under Article 4. The Architect shall prepare a written report discussing energy conservation measures and techniques to be employed consistent with the Owner's Design Standards or the Architect's proposed variances from such standards. Such written report shall include an analysis of the cost savings attributable to the incorporation of such measures and techniques.

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§ 3.2.7 The Architect shall ~~submit the Schematic Design Documents to the Owner, and request the Owner's approval.~~ complete and submit the Schematic Design Documents to the Owner no later than the number of calendar days following its receipt of authorization to proceed with the Schematic Design Phase per Exhibit A, and request the Owner's approval.

§ 3.2.8 The Architect shall determine all major architectural and engineering systems, and shall prepare a written description of the Project together with Schematic Design Documents, specifications, and other description as necessary to properly convey the scale and relationship of the Project components, including, for new construction, site selection, building placement at the site, and response to all related considerations, including but not limited to soil profiles, soil consolidation, ground water level and drainage, and entry/exit relationships to existing buildings.

§ 3.2.9 For projects involving existing construction, the Architect shall verify significant existing conditions to be included in the Project and shall incorporate this information into the written description required by Section 3.2.8.

§ 3.2.10 The Architect shall meet at least once, and more often if required, with representatives of the State Building Code and Standards Division, and with local building and fire code officials, to identify and correct all non-compliance(s).

§ 3.2.11 The Architect shall at appropriate time(s) meet with the Owner and the Owner's Representative to discuss Schematic Design considerations currently being evaluated and Schematic Design conformance to the Owner's Design Standards.

§ 3.2.12 The Architect shall submit to the Owner six (6) complete, bound copies of the approved Schematic Design Documents, which shall include a cost estimate.

§ 3.2.13 The Architect shall not proceed with the Design Development Phase as set forth in Section 3.3 until:

- .1 The Architect has received the Owner's written approval of the Schematic Design Documents;

- .2 The Architect has provided the Owner with a written construction cost estimate that is within the Owner's budget for the Cost of the Work, and
- .3 The Architect has received written authorization and direction from the Owner to proceed with the Design Development Phase.

§ 3.2.14 Upon request by the Owner, the Architect shall prepare drawings and participate in making presentations of the Schematic Design to the Board of Trustees of the Minnesota State Colleges and Universities and/or the Project's college or university

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§ 3.3.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the Owner's budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Owner's approval that conform to the approved Schematic Design Documents, the Owner's Design Standards, the schedule accepted by the Owner, and the Cost of the Work. 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 further describe major materials and systems and establish in general their quality levels.

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§ 3.3.3 The Architect shall submit the Design Development documents to the Owner. Documents to the Owner no later than the number of calendar days following authorization to proceed with the Design Development Phase per Exhibit A, 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.

§ 3.3.4 The design of structural, mechanical, electrical, civil, and landscape systems shall be performed by qualified engineers and architects in the employ or under the direction of the Architect. Direct communications are hereby authorized between the Architect's consultants and the Owner and/or Owner's Representative. The Architect shall be informed regarding the substance of any such communication. The Owner and Owner's Representative shall not direct the Architect's consultants. When this Section 3.3 calls for the Architect to conform to the Owner's requirements regarding Schematic Design, Design Development and Construction Documents, and the Architect is of the opinion that such requirements are internally inconsistent or inconsistent with other obligations of the Architect in this Agreement, the Architect shall present the inconsistency to the Owner for resolution.

§ 3.3.5 A roof design consultant designated by the Owner will be assigned to and become an integral part of the Architect's design team. The Architect's fee shall include the fee and reimbursables of the roof design consultant. Direct communications are hereby authorized between the designated roof design consultant and the Owner and/or Owner's Representative. The Architect shall be informed regarding the substance of any such communication. The Owner and Owner's Representative shall not direct the Architect's consultants.

§ 3.3.6 As part of the Design Development Documents, the Architect shall prepare, for acceptance by the Owner, (1) documents (in reasonable detail) to establish the space arrangement, building masses, and building materials; (2) floor plans (including the built-in equipment layout); (3) plans delineating the structural, civil, mechanical and electrical systems; (4) plans for the utility layouts and connections; (5) plans for the major building sections; (6) plans for site utility and landscape work; (7) plans/drawings of building details; and (8) written estimates of the cost of each of the major building systems. The Owner shall accept, or the Architect shall modify at the Owner's request the Design Development Documents until the same are accepted by the Owner.

§ 3.3.7 The Architect shall meet at least once, and more often if required, with representatives of the State Building Code and Standards Division, and with local building and fire code officials, to identify and correct all non-compliance(s).

§ 3.3.8 The Architect shall at appropriate time(s) meet with the Owner and the Owner's Representative to discuss Design Development considerations currently being evaluated and Design Development conformance to the Owner's Design Standards.

§ 3.3.9 As required by the Owner, the Architect shall forward sets of the Design Development Documents and cost estimates to the Owner and the Owner's Representative, and sets of the Design Development Documents to review consultants designated by the Owner and/or the Owner's Representative. Each set shall include architectural, structural, mechanical, electrical, civil, and landscape systems that appropriately describe the Project construction.

§ 3.3.10 The Architect shall not proceed with the Construction Documents Phase until:

- .1 The Architect has received the Owner's written acceptance of the Design Development Documents,
- .2 The Architect has provided the Owner with an estimated bid date and a written construction cost estimate that is within the Owner's budget for the Cost of the Work, and
- .3 The Architect has received written authorization and direction from the Owner to proceed with the Construction Documents Phase.

...

§ 3.4.1 Based on the Owner's (1) written approval of the Design Development Documents, and on the Owner's (2) written authorization to start, and (3) written authorization of any adjustments in the Project requirements and the Owner's 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.

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§ 3.4.3 During the development of the Construction Documents, the Architect shall ~~assist the Owner in the development and preparation of~~ develop and prepare (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)~~ General Construction Contract Conditions. The Architect shall also compile a project manual that includes the ~~Conditions of the Contract for Construction~~ General Construction Contract Conditions and Specifications and may include bidding requirements and sample forms.

...

§ 3.4.5 The Architect shall submit the Construction Documents to the ~~Owner,~~ Owner no later than the number of calendar days following authorization to proceed with the Construction Documents Phase per Exhibit A, 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.~~ and request the Owner's acceptance.

§ 3.4.6 The Architect shall provide Construction Documents that conform to the accepted Design Development Documents, the Owner's Design Standards, all schedules accepted by the Owner, and the Cost of the Work. At the Owner's request, the Architect shall modify the Construction Documents until such documents are acceptable to the Owner.

§ 3.4.7 The Architect shall furnish Drawings and Specifications to, and receive written approval from, applicable state and local officials. In addition, the Architect shall meet at least once, and more often if required, to review the design with representatives of the State Building Code and Standards Division, the State Department of Health when applicable, and with local building and fire code officials. The Architect shall be responsible for Project design conformance to all applicable statutes and codes, including variance thereof. When the Architect is of the opinion that such statutes and codes, including variances, are internally inconsistent or inconsistent with other obligations of the Architect in this Agreement, the Architect shall present the inconsistency to the Owner for resolution. If applicable

statutes and/or codes are changed by state and/or local officials during the pendency of design or construction of the Project and the Architect reasonably relied upon the language of the pre-change statute and/or rule and the effect of the change adversely affects the Architect financially in a substantial manner, then the Architect may apply to the Owner for the Owner's consideration of the effect of the change and possible change to the compensation of the Architect.

§ 3.4.8 The Architect shall at appropriate time(s) meet with the Owner and the Owner's Representative to discuss Construction Document considerations currently being evaluated and Construction Document conformance to the Owner's Design Standards.

§ 3.4.9 As required by the Owner and/or the Owner's Representative, the Architect shall forward sets of the Construction Documents to the Owner and the Owner's Representative and to review consultants designated by the Owner and/or the Owner's Representative. Each set shall include architectural, structural, mechanical, electrical, civil, and landscape systems which completely describe the Project construction.

...

§ 3.5.1 The Architect shall not proceed with the bidding phase, whether competitive or negotiated, until:
.1 The Architect has received the Owner's written acceptance of the Construction Documents;
.2 The Architect has provided the Owner and the Owner's Representative with a final written construction cost estimate that is within the Owner's budget for the Cost of the Work; and
.3 The Architect has received written authorization and direction from the Owner to proceed with the bidding phase.

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents requirements, proposed Contract Documents, and such other documents as the Owner may designate.

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.1 procuring the reproduction of Bidding Documents for distribution to prospective bidders; bidders as necessary;

...

§ 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 – the General Construction Contract Conditions.~~ Such administration shall be consistent with any agreement between the Owner and the Owner's Representative. ~~If the Owner and Contractor modify AIA Document A201 – 2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~ the General Construction Contract Conditions, those modifications shall be incorporated into this Agreement, and to the extent any such modification affects the Architect's services under this Agreement, the Architect's compensation and schedule shall be adjusted pursuant to Article 4. To the extent of any conflict between the terms of this Agreement, the above-referenced agreement between the Owner and the Owner's Representative, and the General Construction Contract Conditions, the interpretation most favorable to the Owner shall control.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and the Owner's Representative 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, 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.~~ Owner's issuance to the Contractor of a notice to proceed, and shall terminate at the later to occur of the date that is 365 days after the Architect's issuance to the Owner of the final Certificate for Payment or upon the Architect's

completion of services (such as ten month pre-warranty "walk through" and other typical post substantial completion services). Provided, however, the Architect shall not issue the final Certificate of Payment until the Owner confirms, in writing, that the Contractor has satisfied all of the conditions under Section 9.10 of the General Construction Contract Conditions.

§ 3.6.1.4 The Architect shall not cause changes in the Work without the written approval of the Owner. Should the Architect cause changes in the Work without the Owner's approval any costs incurred due to these changes or to reinstate the original requirements shall, at the discretion of the Owner, be paid by the Architect.

§ 3.6.1.5 The Architect shall review and answer properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect shall consult with the Owner and the Owner's Representative, as the Architect, Owner and Owner's Representative mutually consider necessary, regarding such requests and the responses thereto. The Architect shall provide the Owner and the Owner's Representative a copy of all requests and responses.

§ 3.6.1.6 If deemed appropriate by the Architect, or the Owner or the Owner's Representative, the Architect shall prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

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

§ 3.6.1.8 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.

§ 3.6.1.9 The Architect shall render in writing within a reasonable time an opinion as to claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's opinions on matters relating to aesthetic effect shall be the final determination if consistent with the intent expressed in the Contract Documents and approved by the Owner.

§ 3.6.1.10 The Architect shall before the beginning of construction conduct one pre-construction conference, and thereafter construction progress meetings, and shall prepare and distribute appropriate records and minutes of such conferences and meetings.

§ 3.6.1.11 The Architect together with consultants as required shall after the beginning of construction of the Project, but prior to beginning of specific parts of the Project, administer pre-installation conferences dealing with the following specific parts:

See Section A.2.6.4 in Exhibit A.

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§ 3.6.2.1 The Architect shall visit the site. Architect, along with its consultants, shall conduct on-site inspections of the Project construction and hold construction progress meetings at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, directed by the Owner or the Owner's Representative, 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 prepare and forward to the Owner and the Owner's Representative a field report for each on-site inspection within three working days after the completion of each such visit, with such report being in the form of AIA Form G711 or any equivalent form. The Architect shall also 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 shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the ~~Owner~~ Owner, the Owner's Representative 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.

§ 3.6.2.4 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. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by ~~both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.~~ The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. the Contractor.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in ~~AIA Document A201-2007, General Construction Contract Conditions,~~ the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.2.6 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by the Owner and the Owner's Representative with the Architect's consultants are hereby authorized. The Architect shall be informed regarding the substance of any such communication. The Owner or the Owner's Representative shall not direct the Architect's consultants.

§ 3.2.6.7 The Architect shall 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 or 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, which rights do not give rise to a duty or responsibility of the Owner to the Architect or any other individual or entity.

§ 3.6.2.8 Upon 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 the Contractor as provided in the Contract Documents.

...

§ 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 observations at the Project site and 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 that the Work has progressed to the point indicated and that indicated,~~ the quality of the Work is in accordance with the Contract Documents. Documents, and the Contractor is entitled to payment in the amount certified. 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.~~ the Architect at the time of certification.

§ 3.6.3.2 The issuance of a Certificate for Payment shall be a representation that the Architect has confirmed that the Contractor has submitted all required data and information with its Application for Payment, but 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, 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.~~Payment and stamp each such application on the date it was received by the Architect.

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§ 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 Architect-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 the Contract Documents, and further 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~~, and such drawings and submittals must 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. ~~professionals, subject to the standard of care and scope of services under this Agreement.~~

...

§ 3.6.4.5 The Architect ~~shall~~shall, in consultation with the Owner's Representative, prepare a list and maintain a record of submittals and copies of submittals to be supplied and actually supplied by the Contractor in accordance with the requirements of the Contract Documents. The Architect shall advise the Owner and the Owner's Representative, in writing, if the Architect becomes aware that the Work is proceeding in the absence of shop drawings and submittals that have been reviewed and approved, or are required to be reviewed and approved, in accordance with the Contract Documents.

...

§ 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. For all other changes in the Work the Architect must obtain the Owner's written approval and provide written notification to the Owner's Representative. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for review by the Owner's Representative and the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications that describe Work to be added, deleted or modified.

§ 3.6.5.2 The Architect shall ~~maintain records relative to changes in the Work.~~prepare and maintain (1) a continuous listing of all Change Orders, both those proposed and those executed, (2) a second continuous listing of all Construction Change Directives, and (3) a third continuous listing of all approved minor changes in Work, and, in addition, shall provide copies of such records to the Owner and the Owner's Representative.

§ 3.6.5.3 The Architect shall promptly review requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or the Contract Time.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in an adjustment in any schedule or the Cost of the Work, the Architect shall make a recommendation to the Owner and the Owner's Representative, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a change in services of the Architect. With the Owner's approval and notification to the Owner's Representative, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 3.6.5.5 The Architect shall maintain records relative to changes in the Work and within 60 days after the final Substantial Completion of construction of the Work, the Architect shall deliver to the Owner one complete set of clearly titled Project Record Documents Drawings and Specifications as follows:

- .1 as to the Drawings, one complete set of full sized prints;
- .2 as to the Specifications, one bound and one unbound Project Manual, suitable for reproduction;
- .3 and as to electronic records, two complete sets of electronic medium of all Project Record Documents in the form as required by Section A.2.6.6 of Exhibit A.

Project Record Drawings and Specifications are the original Project Drawings and Specifications revised to reflect all bidding phase addenda, all executed Change Orders to the Project construction contract, and all minor changes in the Work authorized by the Architect.

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§ 3.6.6.1 The Architect shall (1) conduct inspections to determine the date or dates of Substantial Completion and the date of final ~~completion~~; completion, (2) issue Certificates of Substantial ~~Completion~~; Completion, (3) receive from the Contractor and forward to the ~~Owner, for the Owner's review and~~ Owner and the Owner's Representative, for the Owner's and the Owner's Representative's review and the Owner's records, written warranties and related documents required by the Contract Documents and assembled by the ~~Contractor~~; Contractor, (4) and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with all of the requirements of the Contract Documents. The Architect shall notify the Owner and Owner's Representative in writing when, in the Architect's opinion, construction of the Project is substantially complete, and then when fully complete including all punch list and closeout items.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and/or the Owner's Representative 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 and the Owner's Representative 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 and the Owner's Representative 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 one year from the date of Substantial Completion, the Architect shall, without additional compensation, (1) inspect the Project site, (2) provide assistance in enforcing any warranty issued by the Contractors, and (3) conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 Ten months following Substantial Completion the Architect, the Owner, and the Owner's Representative shall conduct an on-site walk-through review of the Project structure, operation, and performance. The Architect shall promptly inform the Contractor, the Owner and Owner's Representative, in writing, of the results of this review and shall make appropriate recommendations.

§ 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, ~~and in which case the Owner shall compensate the Architect as provided in Section 11.2, or~~ (2) ordered by the Owner pursuant to Section 4.3, in which case the Owner shall compensate the Architect as provided in Section ~~11.2~~ 11.3 and adjust the schedule for performance of Architect's services.

...

§ 4.1.28 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 ~~shall~~ may entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the ~~following Additional Services~~, Additional Services, listed in this Section 4.3.1, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .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 the Cost of the Work, or procurement or delivery method;
- ...
- ~~.5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~
- ~~.6~~ 6 Preparation of design and documentation for alternate bid or proposal requests proposed by ~~the Owner~~; the Owner after the Owner has approved Construction Documents, except to the extent required under Section 6.7;
- ...
- .9 Evaluation of the qualifications of bidders or persons providing proposals; or
- .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.~~

If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this 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 the Basic Services and Additional Services, and (2) provide an estimate of the probable cost of such services and probable impact, if any, on the schedules. The Architect shall not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization shall either (i) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (ii) 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 this Agreement.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, 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:
Architect:

...

- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- ~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker;~~
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; ~~or~~
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever ~~is earlier~~ is earlier, or
- .7 Providing consultation concerning replacement Work resulting from fire or other causes during the construction phase that is not related to the Instruments of Service

If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this Section 4.3.2 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 the Basic Services and Additional Services, and (2) provide an estimate of the probable cost of such services and probable impact, if any, on the Architect's and Contractor's schedules. The Architect shall not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization shall either (i) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (ii) 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 this Agreement.

§ 4.3.3 ~~The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

- ~~.1 () reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor~~
- ~~.2 () visits to the site by the Architect over the duration of the Project during construction~~
- ~~.3 () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~.4 () inspections for any portion of the Work to determine final completion~~

§ 4.3.4 ~~If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~

§ 5.1 ~~Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights. The Owner shall 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 improvements that was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information made available to the Architect from the Owner's records. The Architect shall not rely on such information without independently~~

confirming that, in the Architect's professional judgment and subject to the duty of care contained in Section 2.2, the information is reliable.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases ~~maintain~~ the budget for the Project and shall consult with the Architect regarding the need to increase or decrease 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. Work as defined in Section 6.1.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. 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. Architect shall not take direction from or act upon requests for modifications or changes in services by anyone other than the Owner and the Owner's Representative.

§ 5.4 The Owner shall furnish shall, upon the Architect's reasonable request, furnish (1) surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a Project to the extent such physical characteristics, legal limitations and utility locations can be determined by review of readily available records, observations of surface conditions, or other standard surveying practices, and the Owner agrees that a survey is needed, and (2) 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.~~ not otherwise provided by the Contractor. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall shall, upon the Architect's reasonable request and the Owner's determination that the Architect needs the requested services, 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 shall, subject to Section 3.1.2, coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall may furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by applicable 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 and the Owner's Representative of the requirements of such tests, and consult with the Owner and the Owner's Representative in selecting and ordering services from consultants who provide such tests, inspections and reports.

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

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

§ 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 any performance by the Contractor under the Construction Documents, including but not limited to requests for information and change order proposals that may affect the design or cost of the Project or may require approval or other actions 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 of the Contract for Construction.~~ Construction Contract Conditions.

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§ 5.13 Whenever this Agreement, the General Construction Contract Conditions, or any other Construction Document refer to the knowledge of the Owner, facts known to the Owner, or documents or information in the possession of the Owner, such references shall be limited to matters actually known by or items actually in the possession of the Owner.

...

§ 6.2 The Owner's budget for the Cost of the Work is provided in the 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~~ may include reasonable contingencies for design, bidding and price escalation; to determine make reasonable judgments about and recommend what materials, equipment, component systems and types of construction are to be included in the Contract Documents; ~~to make-determine and recommend~~ reasonable adjustments in the program and scope of the Project; and to 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. ~~recommend that the Owner include in the Contract Documents alternates that have been approved by the Owner.~~ 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 a format to be established by the Owner with line items based on the standard Construction Specifications Institute divisions of the Work.

§ 6.3.1 If the Owner retains a consultant to provide preconstruction services during the design phases of the Architect's services, including cost estimating services, the Architect shall cooperate with such consultant, which such cooperation shall include:

- .1 providing 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 the Project program, design, schedule and budget; and
- .4 incorporating recommendations approved by the Owner into 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, Construction Documents have been accepted by the Owner for bidding,~~ through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted. Owner shall consider adjustments to the Owner's Budget for the Cost of the work in order 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. In the preparation of construction cost estimates as required by this Agreement, it shall be the responsibility of the Architect to design the Project so that such estimates do not exceed the construction cost Owner's Budget for the Cost of the Work. Whenever the Architect finds, in its opinion, that the cost of the construction Cost of the Work will exceed the construction cost 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 immediately stop work and notify the Owner and the Owner's Representative in writing including any recommendations of the Architect for changes in the size and/or quality of the Project necessary to keep the estimated cost of construction Cost of the Work within the construction cost Owner's Budget for the Cost of the Work. If so directed by the Owner in writing, the Architect shall, at no cost to the Owner, revise or redraft any and all documents necessary for the construction of the Project so as to bring the estimated cost of construction within the Construction Cost. The Owner shall cooperate with the Architect in making such adjustments. necessary adjustments to the Project's size and/or quality if necessary to bring the estimated cost of construction Cost of the Work within the Construction Costs Owner's Budget for the Cost of the Work.

§ 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 may

- .1 give written approval of an increase in the Owner's budget for the Cost of the Work;

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- .4 in consultation with the Architect, revise oversee the revision of the Project program, scope, or and/or quality as required to reduce the Cost of the Work, the Work and rebid the Project; or

...

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify (1) modify, subject to the Owner's written acceptance, 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 6.6.1-6.6.1, (2) provide the services called for in Article 3, and (3) pay the printing and photocopy costs related to modification and rebidding. The Architect's modification of the Construction Documents Documents, the rebidding or renegotiation, and the payment of printing and photocopy costs shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 — COPYRIGHTS AND LICENSES **ARTICLE 7 INSTRUMENTS OF SERVICE**

§ 7.1 Drawings, specifications, and other documents including those in electronic form prepared by the Architect and the Architect's consultants are Instruments of Service as such term is used in this Agreement. The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Specifications. The Architect and the Owner shall jointly own and possess the copyrights for the Instruments of Service. The Owner and the Architect may not, subject to the authorizations contained in this Section 7.2, use any portion or part of the Instruments of Service for any purpose other than the Project without the written consent of the other party, which such consent may be contingent upon the payment of a fee. Provided, however, (1) the Architect may, without the need for the Owner's consent, use those portions and parts of the Instruments of Service that are not unique to the Project and are commonly included in buildings and structures of a nature similar to structures and buildings that are part of the Project, and (2) the Owner may, without the need for the Architect's consent, use the any portion or all of the Instruments of Service in conjunction with its operation and maintenance of the structures and buildings that are part of the Project. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar

purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the ~~Architect's consultants.~~Owner.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize ~~the~~The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 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 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

For purposes of this Article 7, the project shall be the original Project and any and all modifications, expansions and additions thereto

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§ 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 in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~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 ~~AIA Document A201-2007, General Conditions of the Contract for Construction.~~the General Construction Contract 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 8.1.2 shall survive completion of Architect's services under this Agreement or the termination of this Agreement.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

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

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

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction ~~thereof, thereof if the parties to the mediation~~ agree to such enforcement and such agreement is documented in the mediators report.

§ 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 the following:~~
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

— Arbitration pursuant to Section 8.3 of this Agreement

— Litigation in a court of competent jurisdiction

— Other (Specify)

§ 8.3.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration~~ Upon mutual agreement the Owner and the Architect may select non-binding arbitration as the method for dispute resolution in this Agreement, which, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its~~ conducted in accordance with the American Arbitration Association Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question. The party filing a notice of demand for arbitration must assert in the demand all claims, disputes, or other matters then known to that party on which arbitration is permitted to be demanded.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall only be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof if the parties to the arbitration agree to such and such agreement is documented in the arbitrator's decision.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof, only be final, and binding if the parties to the arbitration agree to such and such agreement is documented in the arbitrator's decision .

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~~§ 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 seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~

~~§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~ § 9.2 At any time during the term of this Agreement the Owner may terminate the Project entirely or suspend it for an indefinite period of time upon seven days written notice to the Architect. If the Owner terminates or suspends the Project without cause for more than 30 consecutive days, then the Architect shall be compensated for services performed prior to notice of such termination or suspension. If the Project is resumed, the Architect's fees for the remaining services and the time schedules shall be negotiated.

§ 9.3 If the Owner suspends the Project for more than ~~90~~180 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than ~~seven days' written notice.~~30 days' written notice, and such termination shall be effective as of the noted date unless the Project is restarted prior to such date.

§ 9.4 ~~Either~~Except as otherwise specifically provided in this Agreement, either party may terminate this Agreement upon not less than ~~seven~~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.~~the termination and the cause for such termination is not corrected within such 30 day time period.

§ 9.5 The Owner ~~may~~may, at its sole option and discretion and for cause or without cause, terminate this Agreement upon not less than seven days' written notice to the ~~Architect for the Owner's convenience and without cause.~~Architect.

§ 9.6 In the event of termination or suspension not the fault of the Architect, the Architect shall be compensated for services performed prior to ~~termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.~~

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~such termination or suspension, together with Reimbursable Expenses incurred prior to such termination or suspension that are then due and mutually agreed to. The Architect shall not be entitled to any anticipated profits or consequential damages.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.~~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.~~

§ 9.9 If upon termination the Owner incurs additional cost as a result of the Architect's failure to perform under this Agreement the Architect shall be liable for the full amount of such additional costs. The Owner shall be entitled to withhold from any payment due to the Architect an amount which the Owner reasonably believes may be its additional costs until such time as the exact amount of such additional cost is determined and the Architect has rendered payment thereof. The Architect shall only be entitled to payment for services pursuant to this Agreement performed as of the date of notice of termination.

§ 9.10 The Owner may, at any time during the term of this Agreement, reduce the scope of the Project upon seven days written notice to the Architect. Fees for work completed as of the time of the notice of reduction shall be determined by the terms of this Agreement at the time of the notice. Fees for the remainder of the work shall be set by amendment to this Agreement.

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§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3 laws of the State of Minnesota. Except as otherwise provided in this Agreement, all legal and equitable proceedings, controversies, or disputes arising from this Agreement shall be venued in the District Court of Ramsey County, State of Minnesota.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction-General Construction Contract Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their Architect binds itself, its agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign. The Architect shall not assign nor transfer all or any part of this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Owner.

...

§ 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. Architect except that the Architect shall cooperate and work with the Owner's Representative as provided in the General Construction Contract Conditions and in the agreement between the Owner and the Owner's Representative.

...

§ 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 if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. 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 consent of the Owner in each instance.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate a state or federal law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect

shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 10.10 Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

§ 10.11 Subject to the provisions of Minn. Stat. §§ 337.01 and 337.02, the Architect shall indemnify, save, and hold the Owner, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the Owner, arising from the performance of this Agreement by the Architect or Architect's agents or employees to the extent caused by or contributed to by the negligence of the Architect or its agents or employees. This clause shall not be construed to bar any legal remedies the Architect may have for the Owner's failure to fulfill its obligations pursuant to this Agreement.

§ 10.12 The Architect must comply with the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statute, as it applies to all data provided by the Owner in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Architect in accordance with this Agreement. The civil remedies of Minn. Stat. §13.08, apply to the release of the data referred to in this Agreement by either the Architect or the Owner. In the event the Architect receives a request to release any data referred to in this Section 10.12, the Architect must immediately notify the Owner, and the Owner will give the Architect instructions concerning the release of the data to the requesting party before the data is released.

§ 10.13 The Architect will receive a written notice to proceed issued by the Owner. This Agreement shall not be valid or effective, there shall be no liability upon the Owner for payment, and the Architect shall have no obligation to commence work until the notice to proceed is issued.

§ 10.14 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, Invoice, Payment Applications, Requests for Information, and Document Management related to the Project. 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.

§ 10.15 The Architect agrees that during the term of this Agreement it will comply with all applicable provisions and requirements contained in the Minnesota Human Rights Act contained in Chapter 363A of the Minnesota Statutes.

§ 10.16 Minn. Stat. §363A.36 provides that for all contracts estimated to be in excess of \$100,000 with respondents who had more than 40 full-time employees at any time during the previous 12 months in the State of Minnesota must have an affirmative action plan approved by the Minnesota Commissioner of Human Rights. In order to comply with such requirement the Architect must supply the Owner with one of the following items:

- .1 A copy of the Architect's current certificate of compliance issued by the Minnesota Commissioner of Human Rights;
- .2 A statement certifying that the Architect has a current certificate of compliance issued by the Minnesota Commissioner of Human Rights; or
- .3 A statement certifying that the Architect has not had more than 40 full-time employees in Minnesota at any time during the previous 12 months.

§ 10.17 The Architect agrees to comply with the provisions contained in Minn. Stat. §137.36, which requires the Architect to (1) pay any consultant that the Architect engages to perform any of the services to be performed under this Agreement within 30 days of the Architect's receipt of payment from the Owner for undisputed services provided by the consultant, and (2) pay interest of 1.5 percent 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 payment 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.

§ 10.18 The Architect shall supply and make available to Owner either its social security number or its federal employer identification number and its Minnesota tax identification number. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations, and may be used in the enforcement of federal and state tax laws which could result in action to require the Architect to file tax return(s) and to pay delinquent tax liabilities. The Architect shall provide the information required under this Section 10.18 by completing and delivering to the Owner a State of Minnesota Minnesota State Colleges and Universities Data Disclosure Information sheet in the form attached hereto as Exhibit B, and sending an executed original to the Minnesota New Hire Reporting Center, P.O. Box 64212, St. Paul, MN 55164-0212.

§ 10.19 The word Architect is used universally herein to identify the organization named on page one of Exhibit A.

§ 10.20 The Architect acknowledges being aware of and reading the provisions contained in Minn. Stat. §15.43, and further acknowledges and agrees that it has not been involved and will not be involved in any of the prohibited activities delineated in such statute, and that any misrepresentation as to the occurrence or existence of any of such prohibited activities or the participation in any of such prohibited activities will constitute a material default under this Agreement that will entitle the Owner to terminate this Agreement.

§ 10.21 The Architect shall design the Project in a manner that it will comply with the current understanding and interpretation of the Americans with Disabilities Act of 1990 contained in 42 U.S.C. Sections 12101 through 12213 and all rules, regulations and guidelines that implement and apply to such act.

§ 10.22 The Architect represents and agrees that any individual that performs any work under this Agreement, either as the Architect, a direct employee of the Architect, or under a contract with the Architect, will possess all licensures required by Minnesota law and any other necessary licensures for the performance of such work.

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§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

See Exhibit A

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Exhibit A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)See Exhibit A

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section Section, 11.1, 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~percent (—%)~~, zero percent (0%), or as otherwise stated below:

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Schematic Design Phase	<u>Twenty</u>	percent (%)20%)
Design Development Phase	<u>Twenty-five</u>	percent (%)25%)
Construction Documents Phase	<u>Thirty</u>	percent (	%)30%)

Bidding or Negotiation Phase	<u>Five</u>	percent (	%)5%
Construction Phase	<u>Twenty</u>	percent (	%)20%
)

Total Basic Compensation	one <u>One</u>	percent (	100 <u>100</u>
			%) <u>%)</u>

Partial payments for a), b), c), d), and e) above may be made monthly with the amount of the payment prorated over the anticipated work required to complete a particular phase. In no case shall the total of the partial payments for a particular phase exceed the fee for that phase as shown above.

§ 11.5.1 For the purposes of this Article 11 only, construction contract Change Orders shall be divided into two groups: (1) Change Orders resulting solely from change in Project Scope (hereinafter called "Scope Change Orders"); and (2) all other Change Orders (hereinafter called "Other Change Orders"). Concerning additional fees for services pertaining to construction contract Change Orders, the Architect shall receive additional fees only for services pertaining to Scope Change Orders and then only if either of the following conditions exist:

- a) The construction contract award amount (as shown on the Agreement for Construction Services for Advertised Bid Project, Form MnSCU 110) equaled or exceeded the ninety percent (90%) of the Owner's budget for the Cost of the Work (the "Lower Limit"), or
- b) The construction contract award amount is less than the Lower Limit and Scope Change Orders have been processed which exceed the Lower Limit; the Architect shall not receive any additional fees for services pertaining to Scope Change Orders prior to the Lower Limit being exceeded.

Under no circumstances shall the Architect receive any additional fees for any work pertaining to Other Change Orders. Architect fees permitted by this Section 11.5.1 shall be negotiated.

§ 11.5.2 The Architect shall not receive any additional fee for redesign and rebidding work if rebidding is required pursuant to Section 6.6.4.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit A (As applicable)

Employee or Category	Rate
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§ 11.8.1 Payments on account of Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include only certain expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- ~~.1 Transportation and authorized out of town travel and subsistence; Owner authorized out of town travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to Owner's employees;~~
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~
- ~~.3 Fees paid for securing approval of authorities having jurisdiction over the Project;~~
- ~~.4 Printing, reproductions, plots, standard form documents;~~
- ~~.5 Postage, handling and delivery;~~

- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- ~~.7 Owner requested printing, reproductions, plots and standard form documents that are not already included in and required to be supplied by the Architect under this Agreement;~~
- ~~.3 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;~~
- ~~.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~
- ~~.9 All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 Site office expenses; and~~
- ~~.11 Other similar Project-related expenditures Owner that are not already included in and required to be supplied by the Architect under this Agreement;~~

The Architect shall provide complete documentation, including copies of all invoices – paid by the Architect, for those expenses that are to be reimbursed.

~~§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent (—%) of the expenses incurred without any mark-up.~~

~~**§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**~~

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

~~**§ 11.10 PAYMENTS TO THE ARCHITECT**~~

~~§ 11.10.2 Upon presentation of the Architect's invoice, payments by the Owner shall be made in accordance with the provisions contained in Minn. Stat. § 16a.124 Subd. 3, 4, 5 and 8.~~

~~**§ 11.10 PAYMENTS TO THE ARCHITECT**~~

~~§ 11.10.1 An initial payment of (\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. § 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, which such accounting and control systems must be in a form acceptable 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 the Project, including but not limited to accounting records, written policies and procedures, subcontract files (excluding subcontracts, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets, correspondence, Change Order files (including but not limited to 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, 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 but not limited to 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 and shall provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.~~

~~§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (—) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~

~~(Insert rate of monthly or annual interest agreed upon.)~~

~~—%~~

~~§ 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 unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

~~§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.~~ § 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 any applicable law, provided, however, that if a Claim is asserted during said 12 year period then the Architect shall retain all of such Records until the Claim has been resolved.

§ 11.10.4.3 The Architect shall require all entities to whom it made payments for services provided under this Agreement to comply with the provisions of Section 11.10.4 by insertion of the requirements contained in such section in any written agreement between the Architect and such entity.

§ 11.10.4.4 The Owner and its accounts, auditors and agents shall be provided adequate and appropriate work space in order to conduct audits authorized by Section 11.10.4, and the Owner and its accountants, auditors and agents agree to perform all of their work in the provided space and no where else in the Architect's offices, to not interact with the Architect's employees, and to not otherwise unreasonably interfere with or disrupt the work of Architect's employees.

§ 11.10.4.5 If an Audit discloses overpricing or overcharges (of any nature) by the Architect to the Owner, then the Architect shall reimburse such overpricing or overcharges to the Owner, and if such overpricing or overcharge is in excess of 1% of the total contract billings the Architect shall also reimburse the Owner for the cost of the Audit. Any adjustments and/or payments that must be made by the Architect to the Owner as a result of any Audit shall be made within a reasonable period of time not to exceed 30 days from the Owner's presentation of its findings to the Architect.

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.1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect Electronic Format as amended by the Owner and the Architect for this Project, including all attachments.

...

~~.3~~ .3 The General Construction Contract Conditions, which the Architect acknowledges that it has received a copy of, read, understands, and agrees to be bound by the provisions thereof that apply to the Architect.

.4 AIA Document B101-2007 Exhibit A Initial Information, that is attached to this Agreement.

.5 Other documents:

...

Signatures required on Exhibit A

Signatures required on Exhibit A

...

Printed name and title on Exhibit A

Printed name and title on Exhibit A

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:54:39 on 02/02/2010 under Order No. 4092377371_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007 - Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)