

## Regular Business Meeting

Tuesday, February 14, 2023 5:30 PM

Board Assembly Room, 1250 West Broadway Avenue, Minneapolis, Minnesota 55411

1) **Call to Order and Roll Call**

2) **Adoption of the Agenda**

3) **Introduction of the 2023 Student  
Representatives**

4) **Acceptance of Minutes**

4)a. January 3, 2023

4)b. January 10, 2023

5) **Recognitions**

6) **Recess**

7) **Public Comments**

8) **Recess**

9) **Reports and Recommendations from the  
Superintendent of Schools**

9)a. Superintendent's Report

9)b. Comprehensive District Design (CDD) Update

9)c. Budget Update

9)d. Safety Update

10) **Policy Committee Report**

10)a. Revision of Policy 5182: Dropping From  
Enrollment (2023-0015)

11) **Action Items by the Board of Education**

11)a. Approval of the Consent Agenda

11)a.1. Personnel Items

11)a.1.a. Approval of List A personnel matters  
(2023-02-ER-A)

11)a.1.b. Approval of List B personnel matters  
(2023-02-ER-B)

11)a.2. Contracts

11)a.2.a. Amendment to contract 2022-4400001476  
with Change Inc.

11)a.2.b. Contract with Construction Results Corp  
(2023-13937)

11)a.2.c. Amendment to contract 2023-13948 with  
Construction Results Corp

- 11)a.2.d. Amendment to contract 4400001513 with Genesis Consulting Partners, LLC
- 11)a.2.e. Amendment to contract 2023-13930 with Ferndale Market LLC
- 11)a.2.f. Amendment to contract 2023-13935 with Indrotec
- 11)a.2.g. Amendment to Contract 2023-4400001486 with Johnson Litho Graphics
- 11)a.2.h. Amendment to contract 2023-13934 with Kraus-Anderson
- 11)a.2.i. Amendment to contract 2022-4400001414 with The Math Learning Center
- 11)a.2.j. Amendment to contract 2022-4400001413 with The Math Learning Center
- 11)a.2.k. Contract with Parallel Technologies (2023-13952)
- 11)a.2.l. Contract with Rochon Corporation (2023-13947)
- 11)a.2.m. Contract with Sheehy Construction (2023-13933)
- 11)a.2.n. Amendment to Contract 2023-4400001397 with Summit Academy OIC
- 11)a.3. Resolutions

- 11)a.3.a. Resolution Approving MNDOT Safe Routes to School Boost Grant (2023-0018)

12) **New Business**

13) **Reports from Board of Education Directors**

- 13)a. Notice of World's Best Workforce (WBWF) Advisory Committee Appointments

14) **Adjournment**

**Minneapolis Public Schools – Board of Education  
Special School District No. 1  
Annual Organizational Meeting  
January 3, 2023**

**1. CALL TO ORDER**

Call to Order of the Board of Education. Pursuant to due notice mailed to each member of the Board of Education not less than three days prior to the time of such meeting, the Board members met in an annual meeting at the John B. Davis Educational Services Center January 3, 2023, commencing at 6:00 pm. Chair Ellison called the meeting to order.

**1. ROLL CALL**

**Present:** Directors: Abdul Abdi, Sharon El-Amin, Fathia Feerayarre, Adriana Cerrillo, Lori Norvell, Ira Jourdain, Collin Beachy, Kim Ellison, Sonya Emerick, and Interim Superintendent Rochelle Cox – 10

**2. APPROVAL OF THE AGENDA**

**MOTION:** Director El-Amin moved, seconded by Director Jourdain that the Board of Education, Special School District No. 1, approve the Agenda for January 3, 2023. Motion to approve the agenda was put to a vote and carried out unanimously.

**3. ELECTION OF BOARD OFFICERS**

- Director Ellison nominated Director El-Amin for Chair
- Director Norvell nominated Director Beachy for Vice-Chair
- Director Cerrillo nominated Director Cerrillo for Vice-Chair
- Director Beachy nominated Director Norvell for Clerk
- Director Jourdain nominated Director Abdi for Treasurer

**MOTION:** Director Ellison moved, seconded by Director Norvell that the Board of Education, Special School District No. 1, elect Director El-Amin as Chair, Director Norvell as Clerk, and Director Abdi as Treasurer. Motion to approve the slate of directors was put to a vote and passed unanimously.

Directors Beachy and Cerrillo spoke on why they wanted to be Vice-Chair.

**MOTION:** Director Ellison asked Ryan Strack to do a roll-call vote for the position of Vice-Chair. The votes were as follows and Director Beachy was elected as Vice-Chair by majority.

| Director   | Beachy | Cerrillo |
|------------|--------|----------|
| Abdi       | X      |          |
| El-Amin    |        | X        |
| Feerayarre |        | X        |
| Cerrillo   |        | X        |
| Norvell    | X      |          |

|          |   |   |
|----------|---|---|
| Jourdain | X |   |
| Beachy   | X |   |
| Ellison  | X |   |
| Emerick  |   | X |

4. **RECESS** – CHAIR ELLISON PASSED THE GAVEL TO NEWLY ELECTED CHAIR EL-AMIN

5. **ANNUAL ORGANIZATIONAL ITEMS**

a. **Approving Committee Assignments and Appointments**

## 2023 Board Committees

| Policy Committee | Finance Committee | Supt. Eval Committee | ELL Caucus |
|------------------|-------------------|----------------------|------------|
| Norvell          | Jourdain          | Ellison              | Cerrillo   |
| Beachy           | Ellison           | Beachy               | Abdi       |
| Cerrillo         | Abdi              | Abdi                 | Feerayarre |
| Feerayarre       | Emerick           | Feerayarre           | Ellison    |
| El-Amin          | El-Amin           | El-Amin              |            |

## 2023 External Committee Appointments

| AchieveMpls Alternate<br>(Chair is representative)                 | Council of Great City Schools (CGCS) Representative | CGCS Alternate                                                                            | City of Mpls Planning Commission | City of Mpls Neighborhood Revitalization Program (NRP) Policy Board |
|--------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------------------------|----------------------------------|---------------------------------------------------------------------|
| Norvell                                                            | El-Amin                                             | Jourdain                                                                                  | Abdi                             | Feerayarre                                                          |
| Association of Metropolitan School Districts (AMSD) Representative | AMSD Alternate                                      | Metropolitan Urban Indian Directors (MUID)/Phillips Indian Educators (PIE) Representative | MUID/PIE Alternate               | Youth Coordinating Board (YCB)                                      |
| Jourdain                                                           | Beachy                                              | Ellison                                                                                   | Emerick                          | Beachy                                                              |
|                                                                    |                                                     |                                                                                           |                                  | Emerick                                                             |



# 2023 External Committee Appointments

| MN School Board Association (MSBA) Delegates | MSBA Board | World's Best Workforce Advisory (WBWF) Committee Liaison |
|----------------------------------------------|------------|----------------------------------------------------------|
| Beachy                                       | Jourdain   | Norvell                                                  |
| Ellison                                      |            |                                                          |
| Norvell                                      |            |                                                          |
| Emerick                                      |            |                                                          |
| Cerrillo                                     |            |                                                          |

**MOTION:** Director Jourdain moved, seconded by Director Ellison that the Board of Education, Special School District No. 1, approve the Committee Assignments and Appointments. Motion to approve the committees and appointments was put to a vote and carried out unanimously.

## b. Resolution Approving the 2023 Board of Education Meeting Schedule (2023-0002)

**WHEREAS**, the Board of Education regular business meetings will typically be held on the second Tuesday of each month from 5:30 p.m. until adjournment, and will take place in the Assembly Room at the Davis Center (1250 West Broadway Avenue, Minneapolis, MN 55411) per the schedule below unless otherwise noticed; and

**WHEREAS**, the proposed regular business meeting dates for the 2023 calendar year are as follows:

- January 10, 2023
- February 14, 2023
- March 14, 2023
- April 11, 2023
- May 9, 2023
- June 13, 2023
- August 15, 2023 (3rd Tuesday due to Primary Election Day)
- September 12, 2023
- October 10, 2023
- November 14, 2023
- December 12, 2023 (Truth-in-Taxation Meeting, 6:00 p.m.)

**WHEREAS**, the Board of Education committee of the whole (discussion) meetings will typically be held on the fourth Tuesday of each month from 6:00 p.m. until 8:00 p.m., on topics determined by the Board Chair in consultation with the Superintendent, and will take place in the Assembly Room at the Davis Center (1250 West Broadway Avenue, Minneapolis, MN 55411) per the schedule below unless otherwise noticed;

**WHEREAS**, the proposed committee of the whole meeting dates for the 2023 calendar year are as follows:

- January 24, 2023
- February 28, 2023
- March 28, 2023
- April 25, 2023
- May 23, 2023
- August 22, 2023
- September 26, 2023
- October 24, 2023
- November 28, 2023

**WHEREAS**, Board of Education committees will determine their own meeting schedules, which shall be posted, duly noticed, and will typically occur on Tuesdays; and

**WHEREAS**, special business meetings, emergency meetings, and meetings closed to the public shall be separately posted and duly noticed in accordance with applicable policies and laws.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 (Minneapolis Public Schools) hereby adopts the 2023 schedule of board meetings.

**FURTHER BE IT RESOLVED**, that the Board Chair, in consultation with the Superintendent and in accordance with all meeting notice requirements, may modify dates and times as needed to adjust for unforeseen circumstances.

ADOPTED this 3rd day of January 2023.

**MOTION:** Director Norvell moved, seconded by Director Ellison that the Board of Education, Special School District No. 1, approve the 2023 Board of Education Meeting Schedule. Motion to approve the schedule was put to a vote and carried out unanimously.

**c. Resolution Approving 2023 Organizational Matters**

**WHEREAS**, in accordance with Minnesota Statutes Section 123B.14, an annual organizational meeting must be held organize for the year.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 (Minneapolis Public Schools) hereby enacts and authorizes the following, effective for the 2023 calendar year:

1. Designate Finance & Commerce as the district's official newspaper for statutorily required notices and postings
2. Fix the compensation of board members at the continued annual rate of \$20,000 for directors and \$22,000 for chair and vice-chair, and the board student representative stipend continued at \$5,000 per student
3. Subsume the duties of the Audit Committee into the Finance Committee and discontinue the Audit Committee
4. Designate Interim Superintendent Cox as MPS's Identified Official with Authority for Education Identity Access Management for Minnesota Department of Education and authorize the board chair to execute required documentation
5. Direct the Policy Committee to develop and propose an ad-hoc committee to review and make any needed recommendations for the student board representative program
6. Continue to urge the City of Minneapolis and Minnesota Legislature to allow the option of appointing non-board member designees to the City's Planning Commission and Neighborhood Revitalization Program Board

**MOTION:** Director El-Amin moved, seconded by Director Jourdain that the Board of Education, Special School District No. 1, approve the Resolution

Approving 2023 Organizational Matters. Motion to approve the resolution was put to a vote and carried out unanimously.

**d. Financial Authorizations**

1. Resolution Delegating Contracting and Purchasing Authority to the Superintendent (2023-0004)
2. Resolution Appointing the Deputy Treasurer and Assistant Deputy Treasurer (2023-0005)
3. Resolution Authorizing Facsimile Signatures (2023-0006)
4. Resolution Authorizing Electronic Funds Transfers (2023-0007)
5. Resolution Designating Depositories (2023-0008)
6. Resolution Regarding Banking Authority for Minnesota School District Liquid Asset Fund (2023-0009)
7. Resolution Regarding Banking Authority for Us Bank National Association (2023-0010)
8. Resolution Regarding Banking authority for Bremer Bank (2023-0011)
9. Resolution Regarding Banking Authority for Wells Fargo Bank, N.A. (2023-0012)

**MOTION:** Director Abdi moved, seconded by Director Emerick that the Board of Education, Special School District No. 1, approve the above Financial Authorizations as a slate. Motion to approve the Financial Authorizations was put to a vote and carried out unanimously. Vote was repeated to correct for a clerical error.

**6. NEW BUSINESS**

**a. Superintendent Search Process Update - Presentation**

**7. ADJOURNMENT**

**Chair El-Amin adjourned the meeting**

**Minneapolis Public Schools – Board of Education**  
**Special School District No. 1**  
**Regular Business Meeting**  
**January 10, 2023**

**1. CALL TO ORDER**

Call to Order of the Board of Education. Pursuant to due notice mailed to each member of the Board of Education not less than three days prior to the time of such meeting, the Board members met in a regular business meeting at the John B. Davis Educational Services Center January 23, 2023, commencing at 5:30 pm. Chair El-Amin called the meeting to order.

**1. ROLL CALL**

**Present:** Directors: Abdul Abdi, Sharon El-Amin, Fathia Feerayarre, Adriana Cerrillo, Lori Norvell, Ira Jourdain, Collin Beachy, Kim Ellison, Sonya Emerick, and Interim Superintendent Rochelle Cox – 10

**2. APPROVAL OF THE AGENDA**

**MOTION:** Director Beachy moved, seconded by Director Norvell that the Board of Education, Special School District No. 1, approve the Agenda for January 10, 2023.

**AMENDMENT:** Chair El-Amin moved, seconded by Director Beachy, to pull Item 7.a.2.a from the consent agenda to discuss and vote on as a separate item. Amendment to amend the agenda carried unanimously.

Motion to approve the agenda as amended was put to a vote and carried out unanimously.

**3. APPROVE OF MINUTES**

**MOTION:** Director Norvell moved, seconded by Director Beachy that the Board of Education, Special School District No. 1, approve the Minutes from the December 13, 2022, meeting Motion to approve the minutes was put to a vote and carried unanimously.

**4. PUBLIC COMMENTS** – Clerk Norvell called the list of those who signed up to speak during Public Comments.

**5. RECESS**

**6. REPORTS AND RECOMMENDATIONS FROM THE SUPERINTENDENT OF SCHOOLS**

- a. Superintendent's Report
- b. Comprehensive District Design (CDD) Update

**7. ACTION ITEMS**

**a. Approval of Consent Agenda**

These action items represent those that do not involve major policy decisions, budget decisions, taxing decisions, bond awards or items related to the Superintendent's contract of evaluation. Business items on this agenda are previously authorized or budgeted expenditures.

1. *Personnel Items*
  - a. *Personnel List A*
  - b. *Personnel List B*
2. *Contracts Requiring Board of Education Approval*
  - a. *Amendment to contract 2023-13905 with Bille Bus Transportation, Inc*
  - b. *Amendment to contract 2023-13921 with Kraus-Anderson*
  - c. *Contract with N2Y LLC (2023-4400001648)*
  - d. *Amendment to contract 2023-4400001575 with Now Micro*
  - e. *Contract with RAK Construction Inc (2023-13923)*
3. *Settlements*
  - a. *Legal Settlement: Hill vs. Minneapolis Public Schools*

**MOTION:** Director Abdi moved, seconded by Director Feerayarre that the Board of Education, Special School District No. 1, approve the Consent Agenda. Motion to approve the Consent Agenda was put to a vote and carried out unanimously.

**b. Authorization to contract with Axiom (pulled from Consent Agenda)**

**MOTION:** Director El-Amin moved, seconded by Director Beachy that the Board of Education, Special School District No. 1, approve Authorization to contract with Axiom. Motion to authorize the contract with Axiom was put to a vote and carried out unanimously.

**c. Repeal of Policy 7420: Bonded Indebtedness (2023-0001) (Attachment 1)**

**MOTION:** Director Norvell moved, seconded by Director Beachy that the Board of Education, Special School District No. 1, approve the Repeal of Policy 7420. Motion to approve the Repeal was put to a vote and carried out unanimously.

**8. NEW BUSINESS - NONE**

**9. REPORTS FROM BOARD DIRECTORS**

Comments from Directors Norvell, Ellison, Jourdain, and El-Amin

**10. ADJOURNMENT**

**Chair El-Amin adjourned the meeting at 8:35 PM.**

**MINNEAPOLIS PUBLIC SCHOOLS  
RESOLUTION 2023-0001**

**RESOLUTION REPEALING POLICY 7420**

**WHEREAS**, The Board’s Policy Committee has recommended the proposed changes.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

**SECTION 1:**        **REPEAL** “Policy 7420: Bonded Indebtedness” of the Minneapolis Public Schools Policies & Regulations is hereby *repealed* as follows:

**R E P E A L**

~~Policy 7420: Bonded Indebtedness~~ (*Repealed*)

**1. PURPOSE**

The purpose of this policy is to establish the limits of bonded indebtedness the District may incur.

**2. GENERAL STATEMENT OF POLICY**

The District shall be limited to that amount of bonded indebtedness as allowed under applicable Minnesota Law.

**3. RESPONSIBILITY**

The Superintendent, or designee, shall make recommendations to the board on amounts and timing of bonded indebtedness, as are deemed necessary for the proper establishment and operation of schools within the limits of state law.

~~**Original Adoption:**~~

~~04/25/1967~~

~~**Revision Dates:**~~

~~02/24/1976, 12/15/2009~~

~~**Legal References:**~~

- Minn. Stat. §123B.59 (Alternative Facilities Bonding and Levy Program)
- Minn. Stat. §123B.62 (Bonds for Certain Capital Facilities)
- Minn. Stat. §123B.71 (Review and Comment for School District Construction)
- Minn. Stat. §123D.11 (School District Bonds)
- Minn. Stat. §273.1103 (Net Debt, Terminology of Laws or Charters)
- Minn. Stat. Chapter 473F (Metropolitan Revenue Distribution)
- Minn. Stat. §475.53, Subd. 4 (Limit of Net Debt)
- Minn. Stat. §475.56 (Interest Rate)

**~~MPS Policy Cross-References:~~**

- Policy 3005 (Budget)
- Policy 3170 (Multi Year Capital Planning)
- Policy 3172 (Annual Capital Budget)
- Policy 3176 (Capital Improvements Budget)
- Policy 3290 (Debt: Purposes and Limitations)
- Policy 3294 (Bond Ratings)

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS \_\_\_\_\_.

|            | <b>AYE</b> | <b>NAY</b> | <b>ABSENT</b> | <b>ABSTAIN</b> |
|------------|------------|------------|---------------|----------------|
| Abdi       | _____      | _____      | _____         | _____          |
| Beachy     | _____      | _____      | _____         | _____          |
| Cerrillo   | _____      | _____      | _____         | _____          |
| El-Amin    | _____      | _____      | _____         | _____          |
| Ellison    | _____      | _____      | _____         | _____          |
| Emerick    | _____      | _____      | _____         | _____          |
| Feerayarre | _____      | _____      | _____         | _____          |
| Jourdain   | _____      | _____      | _____         | _____          |
| Norvell    | _____      | _____      | _____         | _____          |

Presiding Officer

Attest

\_\_\_\_\_  
, Chair, Minneapolis Public Schools

\_\_\_\_\_  
, Clerk, Minneapolis Public Schools



# Superintendent's Report

**Regular Business  
Meeting**

February 14, 2023





# **Superintendent Update**

## **Interim Superintendent Rochelle Cox**

# Superintendent Report Topics

- **Comprehensive District Design Update: Key Budget Topics**
  - Language Pathways and Programming
  - Small School Fiscal Subsidies
  - Magnet Pathways
- **Budget Update**
  - 2023-2024 Budget Development Process
  - Future Budget Planning
  - Achievement and Integration Plan and Budget
- **Safety Update**

# Comprehensive District Design (CDD) Update: Key Budget Topics

# Review CDD Goals

## Academics

- A well-rounded, preK-12 education for every student in every part of the city
- Every student graduates with the academic, social/emotional, and technical skills to be successful in college and/or career
- Equitable access to academically rigorous and culturally relevant programming including STEAM, dual-language immersion, and CTE
- Safe and welcoming environment for all students and families

## Equity

- Reduction in racially and economically isolated schools
- High-quality community schools in every part of the city
- Improved access to magnet programs closer to home
- Student placement policies and processes that better serve all families
- School climate improvements to support better student retention, family and staff experiences, and student learning

## Sustainability

- Alignment of budgets to accomplish goals and values
- Stabilized and predictable staffing
- Correction of uneven enrollment patterns
- Professional development to improve staff recruitment and retention
- Culturally relevant programming and customer service
- Academic pathways supported by financially sustainable transportation

# Language Pathways and Programming

Muhidin Warfa, Executive Director of  
Multilingual and Magnet Programs

# Historical Background

- **2004:** The Hmong Language Program started as an elective heritage language class.
- **2012:** Program grew into the Hmong Dual Language Program at Hmong International Academy with instruction in Hmong for 80% starting in K and growing to 50%/50% Hmong/English by 5th grade. Program pathways to Olson Middle and Henry High School.
- **2013:** The high school Somali world language program started at South high in 2013.
- **2018:** A Somali world language and a Somali ethnic studies courses were added to Heritage.
- **2021:** The Somali program, started at Lyndale and Sullivan as elective courses for students, is offered for K-2 and adds a grade level every year.

# Program Values and Goals

- **Acknowledge the unique cultural and linguistic assets** of the students who attend
- **Support and prepare students** to become bilingual, biliterate, and build multi-literacy
- **Promote academic achievement** in language proficiencies
- **Develop identity for a multilingual world** with 21st century academic-social skills
- **Put program students on a pathway** to obtain the [Bilingual Seal](#) in high school.

# Current Enrollment in Pathway Programs

## Hmong Pathway Program

- Grades K-5: 64 students
- Grades 6-7: 51 students (Grade 8 will be added next school year)
- Grades 9-12: 108 students
- **Total of 223 students**

## Somali Pathway Program

- Grades K-2: 149 students
- Grades 9-12: 96 students
- **Total of 230 students**



# Language Pathways and Programming: Next Steps

Budget considerations:

## **Hmong Program:**

- Currently 1 teacher per grade at HIA
- Enrollment challenges due to about 12 students per grade.

## **Somali Program:**

- 1 teacher each at Lyndale and Sullivan teaching elective course for K-2 students.
- Need to add 2.5 teachers at each school to add courses up to 5th grade

Programs need considerable increased enrollment to be cost neutral, however these programs are aligned to our values at MPS

# Small School Fiscal Subsidies

Thom Roethke, Director of Budget

# Historical Background

- The “small school subsidy” is an additional allocation provided to schools with a projected enrollment below 250 students.
- Schools that are eligible for the subsidy receive an additional \$200 per student that can be used at the school’s discretion.
- The small school subsidy is a recognition that small schools may not be able to provide appropriate resources and opportunity to students even after meeting predictable staffing requirements.
- Many schools that receive the small school subsidy have more lower-income students who are eligible for free or reduced lunch.
- Many schools that receive the small school subsidy also receive compensatory education or Title 1 allocations.

# Current Data

|                   | <b>SY 22-23</b> | <b>SY 23-24</b> | <b>Change</b> |
|-------------------|-----------------|-----------------|---------------|
| # of Schools      | 13              | 15              | +2            |
| Subsidy Amt in \$ | \$509,800       | \$588,000       | \$78,200      |
| Budgeted Enroll.  | 2,549           | 2,940           | +391          |
| % of Students     | 8.7%            | 10.8%           | +2.1%         |

This year, we budgeted for 8.7% of our students to attend a school eligible for the small school subsidy. Next year we are budgeting for 10.8% of our students to attend an eligible school.

# Considerations

## **Schools that are eligible for the small school subsidy:**

- Tend to have student bodies that come from higher poverty households relative to many larger schools.
- Are often located in neighborhoods where MPS experiences lower “market share” relative to other neighborhoods.
- Receive an average of \$462K in Compensatory Education funding.

# Small School Fiscal Subsidies: Next Steps

- As part of the evolution of the board's overall strategy for the district, they may want to specify the district's small school strategy in more detail:
  - What is the place of small schools in our district?
  - To what level are we willing to devote additional resources to subsidize these schools?
  - Are small schools able to be properly resourced within the limitations of the district's budget?
- As the board provides input on programming and direction for small schools, the district must engage other stakeholders such as families and neighborhoods.

# Magnet Pathways

Eric Moore, Senior Advisor to the  
Superintendent

# Background

## **Magnets are:**

- Designed to support racial and economic integration through school choice
- Have a thematic focus that enhances core content and provides additional opportunities to explore a thematic interest.
- Were centralized during the CDD to support the values of integration, increase access and opportunity and equity

## **Magnet values:**

- Racial and economic integration
- Access and opportunity
- Equity
- K-12 Pathway (as determined by model)



# Elementary Magnet by SOC (Percentages)

| Year         | Bethune   | Emerson   | Green     | Hall      | Ella Baker | Las Estrellas | Sullivan  | Marcy | Seward |
|--------------|-----------|-----------|-----------|-----------|------------|---------------|-----------|-------|--------|
| Overall 2019 | 95        | 87        | 95        | 95        | 98         | 87            | 83        | 59    | 64     |
| Overall 2021 | 90        | 71        | 75        | 85        | 90         | 81            | 90        | 63    | 64     |
| Overall 2022 | <b>87</b> | <b>64</b> | <b>75</b> | <b>83</b> | <b>88</b>  | <b>83</b>     | 87        | 70    | 63     |
|              |           |           |           |           |            |               |           |       |        |
| K 2019       | 93        | 85        | 84        | 89        | 98         | 88            | 84        | 63    | 62     |
| K 2021       | 86        | 64        | 69        | 76        | 78         | 82            | 91        | 64    | 59     |
| K 2022       | <b>81</b> | <b>64</b> | <b>64</b> | <b>69</b> | <b>86</b>  | <b>72</b>     | <b>80</b> | 70    | 57     |

# Middle School Magnet By SOC (Percentages)

| Year                | Anderson  | Franklin  | Sullivan  | Ella Baker |
|---------------------|-----------|-----------|-----------|------------|
| <b>Overall 2019</b> | 95.4      | 97        | 83        | 98         |
| <b>Overall 2021</b> | 76        | 93        | 90        | 90         |
| <b>Overall 2022</b> | <b>76</b> | <b>91</b> | 87        | <b>88</b>  |
|                     |           |           |           |            |
| <b>6 2019</b>       | 97.5      | 99        | 98        | 100        |
| <b>6 2021</b>       | 76        | 76        | 84        | 90         |
| <b>6 2022</b>       | <b>76</b> | <b>76</b> | <b>90</b> | <b>88</b>  |

## HS Magnet By SOC (Percentages)

| Year         | Roosevelt | Fair |
|--------------|-----------|------|
| Overall 2019 | 75        | 67   |
| Overall 2021 | 63        | 62   |
| Overall 2022 | 58        | 62   |
|              |           |      |
| 9 2019       | 70        | 63   |
| 9 2021       | 53        | 67   |
| 9 2022       | 50        | 64   |

# Current Pathways

| Magnet Programming           | Elementary Schools                                                                                                                                | Middle Schools                                          | High Schools                                |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------|
| <b>Spanish Dual-Language</b> | <ul style="list-style-type: none"> <li>Emerson Dual Language</li> <li>Green Central Dual Language</li> <li>Las Estrellas Dual Language</li> </ul> | Andersen Middle School<br>Spanish Dual Language Program | Roosevelt High School Dual Language Program |
| <b>STEM/STEAM</b>            | <ul style="list-style-type: none"> <li>Hall STEM Magnet</li> </ul>                                                                                | Franklin Middle School<br>STEAM Magnet                  | No current pathway                          |
|                              | <ul style="list-style-type: none"> <li>Anne Sullivan (K-8)</li> </ul>                                                                             | Anne Sullivan (K-8)                                     | No current pathway                          |
| <b>Arts</b>                  | <ul style="list-style-type: none"> <li>Bethune Arts Magnet</li> <li>Marcy Arts Elementary</li> </ul>                                              | Franklin Middle School<br>STEAM Magnet                  | FAIR Performing Arts high school            |
| <b>Global Studies</b>        | <ul style="list-style-type: none"> <li>Ella Baker (K-8)</li> </ul>                                                                                | Ella Baker (K-8)                                        | No current pathway                          |
| <b>Montessori</b>            | <ul style="list-style-type: none"> <li>Seward (K-5)</li> </ul>                                                                                    |                                                         |                                             |

# Current Pathways

| Magnet Programming           | Elementary Schools                                             | Middle Schools                                                     | High Schools                                             |
|------------------------------|----------------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------|
| <b>Spanish Dual-Language</b> | Projected enrollment K-5: 1,382<br>Projected enrollment 6: 205 | Projected enrollment 6-8: 496<br>Projected enrollment 9: 87        | Projected enrollment 9-12: 183<br>Grade 9 enrollment: 87 |
| <b>STEM/STEAM</b>            | Projected enrollment K-5: 567<br>Projected enrollment 6: 163   | Projected enrollment 6-8: 499<br>Projected enrollment 9: 166 (70%) | <b>No current pathway</b>                                |
| <b>Arts</b>                  | Projected enrollment K-5: 657<br>Projected enrollment 6: 163   | Projected enrollment 6-8: 499<br>Projected enrollment 9: 166 (30%) | Projected enrollment: 345<br>Grade 9 enrollment: 105     |
| <b>Global Studies</b>        | Projected enrollment K-8: 556                                  | Ella Baker (8): 83                                                 | <b>No current pathway</b>                                |
| <b>Montessori</b>            | Projected enrollment K-5: 575                                  | <b>No grade 6: 87</b>                                              | <b>No pathway needed based on model</b>                  |

# Budget Prioritization

## Timeline: SY 23-24 or 24-25

- **High school magnets - Discussion and Process**
  - Proposed criteria:
    - Building capacity
    - Ability to support district racial and economic integration
    - Current programming at HS
    - School infrastructure
    - Support for program (School, Community, Students)
    - Cost- \$350,000 per magnet program SY 24-25
      - Two additional FTE (to be absorbed by program) proposed for SY 23-24

# Budget Prioritization

- **Seward – Grade 6**

- SY 23-24 Add 3.0 FTEs to support addition of grade 6
  - 2 FTE Teachers
  - 0.4 FTE Prep Time
  - 0.6 Additional Support

# Magnet Pathways: Next Steps

- Board input on HS criteria, budget, and programming direction
- Allocation presented to board as part of budget process



# Questions

# Budget Update

Thom Roethke, Director of Budget

# 2023–2024 Budget Development Process

# 2023–2024 Budget: Reviewing and Realigning

- **Examine all programs, services and initiatives** for alignment with the strategic plan and effectiveness
- **Central office budgets sorted into categories** (required/strategic/essential/administrative)
- **Analyze special funding streams** (Title I, Compensatory Education dollars, referendum, Achievement and Integration, etc.)
- **School budgets allocated** by specific funding formulas and per pupil calculations

# 2023–2024 Budget Timeline

- **Last two weeks of January:** Department staff presented proposed budgets to a Budget Alignment Committee
- **Mid-February:** The Budget Alignment Committee will make final budget recommendation
- **February 13:** Budgets sent to schools
- **March 3:** Budgets finalized for schools and departments
- **May 9:** First reading by the Board
- **June 13:** Final reading for approval

# Provide Feedback on 2023–2024 Budget

- **Contact** your schools' Site Council
- **Email** [your board members](#)
- **Email** [answers@mpls.k12.mn.us](mailto:answers@mpls.k12.mn.us)
- **Call** and leave a voicemail at 612-668-0230
- **Sign up** [to share your feedback with board members in person](#) at an upcoming board meeting

# Future Budget Planning

# Overview

- **Without changes to infrastructure and expenses**, MPS will not have enough revenue to meet current expenses level beginning in the 2024-2025 school year
- **MPS would have to borrow money** to pay its bills in order to maintain things as they are now
- **MPS intends to fix the problem** before that – and as important – align the budget with our strategic plan



# Goals

- **The budget is our values statement** and should point directly to our strategic plan
- MPS needs to find the intersection of what we **value**, what we can **afford**, and what we can **deliver** on
- We need to figure this out **with** students, staff, and community; not to do it to them

## Next Steps

- **Understanding board direction** and desired approach on goals, values, and timeline
- **Gathering all necessary data and information** by analyzing and assessing building capacity and conditions, educational program needs, enrollment projections, building subsidization and related considerations (such as transportation and other shared services)
- **Designing future community engagement** and communication processes

# Ongoing Work

Throughout the budget process, MPS continues to:

- **Advocate for the federal and state government** to appropriated fund public education, including fully funding English Learner and Special Education services – which would result in an additional almost \$70 million each year
- **Focus on creating the climate and culture in our schools to retain the students** we have and recruit new students

# Achievement and Integration Plan and Budget

Derek Francis, Executive Director of Equity  
and School Climate

# Achievement and Integration Program

## 124D.861 ACHIEVEMENT AND INTEGRATION FOR MINNESOTA.

Subdivision 1. **Program to close the academic achievement and opportunity gap; revenue uses.** (a) The "Achievement and Integration for Minnesota" program is established to pursue racial and economic integration and increase student academic achievement, create equitable educational opportunities, and reduce academic disparities based on students' diverse racial, ethnic, and economic backgrounds in Minnesota public schools.

# Funding Requirements

## ALLOWABLE FUNDING USES

- Strategies directly in the [Achievement and Integration Plan](#)
- Types of programs approved in statute include:
  - Integrated learning environments
  - Family engagement initiatives
  - Rigorous career and college readiness programs
  - Professional development
  - Recruitment and retention of diverse staff
  - Equitable access to effective and diverse teachers
- 80% direct student services, >no more than 20% professional development, >10% admin

# Funding Requirements

## UNALLOWABLE FUNDING USES

- English Learner, Special Education, American Indian Education, Programs already funded in another way
- Staffing that MPS is already obligated to provide.
- Ongoing technology costs

# Current Achievement and Integration Plan Examples

- RIS school support
- Magnet Schools
- Retention and recruitment of staff of color
- Multi-tiered Systems of Support (MTSS)
- College and career readiness
- Ethnic Studies and curriculum transformation
- AVID
- GEMS and GISE STEM Programming
- Summer Academy
- Climate Framework
- Student leadership: Youth Participatory Participation (YPE)



# Examples of Stakeholder Feedback Focus Areas

- Partnerships for career and college readiness
- Programming for developing savvy tech skills as early as possible
- Teachers of color in our classrooms
- Counselors to work with families on FAFSA and post high school options
- Family engagement that includes supportive resources and mentoring services
- Curriculum transformation and expanding understanding of all our MPS cultures
- Staff equity professional development, support and connections that welcome every identity
- Interdistrict student leadership opportunities

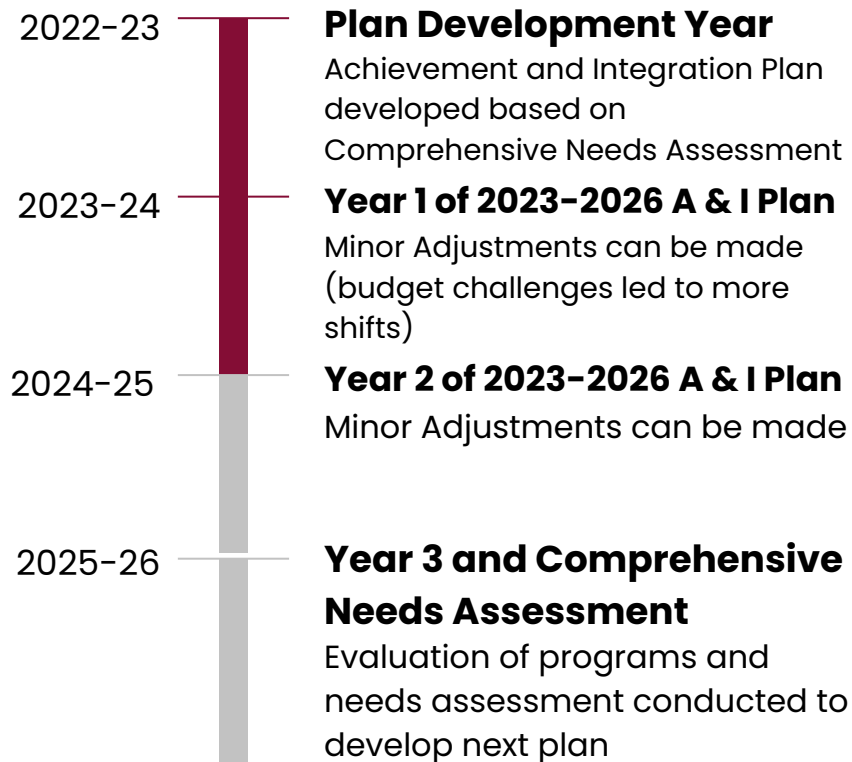
# A&I Funding FY 2023–24

## **New plan funding from MDE: \$13,071,958.00**

### Main Categories:

- Racially Identifiable Schools (21)
- Academic Programming – Partnership with Academics
  - Magnet Sites
  - District-wide Professional Development to support Academic Programming
- Professional Development
  - District-wide Social Emotional Learning Programming
  - Restorative Practices
  - Equity Oriented Professional Development
- Student, Family/Community Engagement and Support
- College and Career Readiness

# Plan Development Timeline



# Important Dates

Engagement and  
Finance Committee

Vote on Plan by MPS  
School Board

**Feb 2023**

**March 15, 2023**

**Jan 2023**

**March 14, 2023**

Overview to  
School Board

FY 2023–2026 Plan  
due to MDE

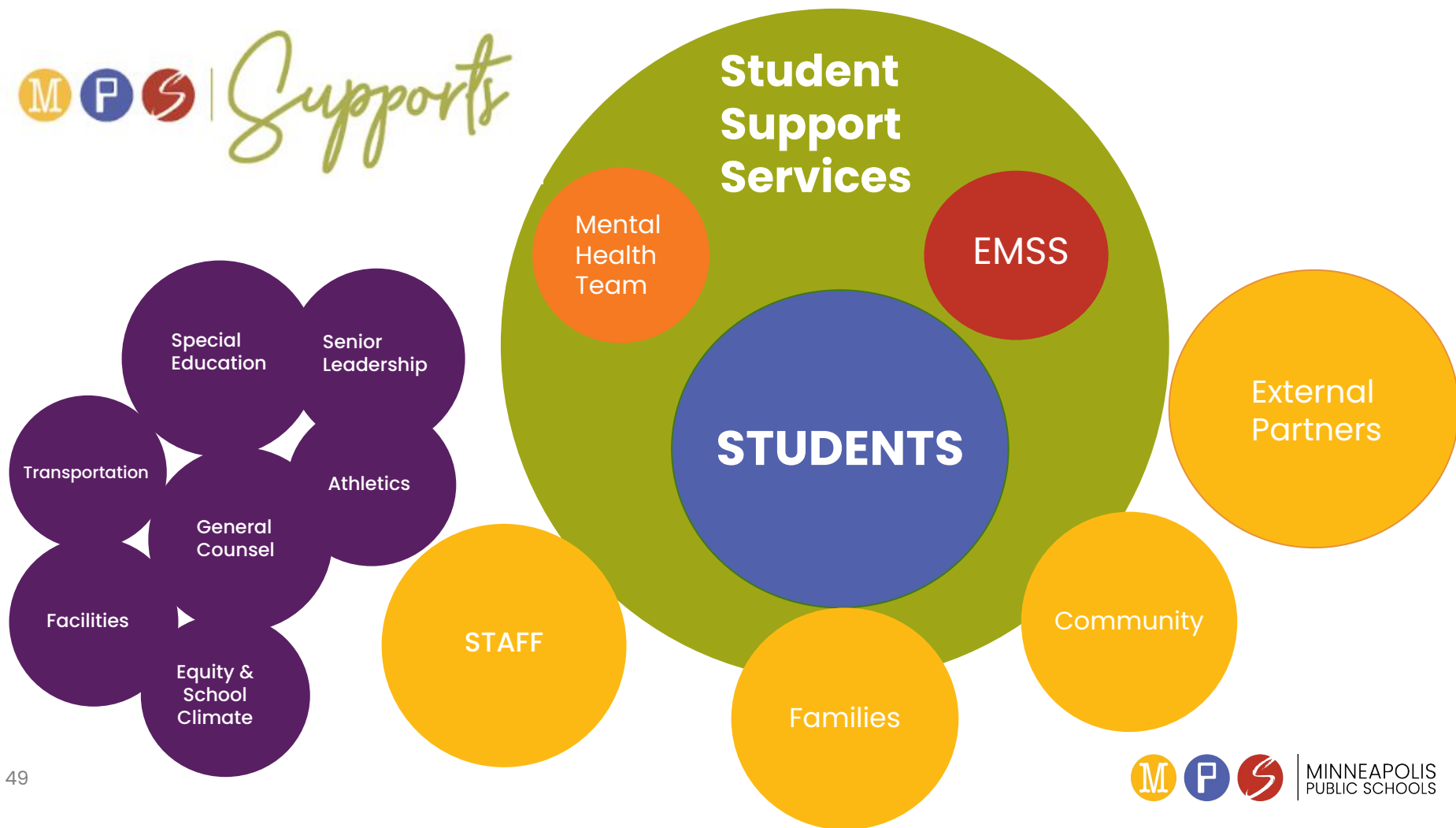
# Questions?

# Student Support Update

Meghan Hickey, Executive Director of  
Student Support Services

# Overview

- MPS approach
- Emergency Management, Safety and Security (EMSS) Department
  - Partnerships
  - Tools for Support
- 2022-2023 Security Enhancements Update





# The Four R's

**READY**

**R.E.A.C.T.\***

**RECOVER**

**RELATIONSHIPS**



\*Recognize the situation; Evaluate options; Act; Communicate; Take Inventory

# Emergency Management, Safety and Security (EMSS)

- In order to provide students and staff with safe and welcoming environments, EMSS provides:
  - Training and coaching
  - Emergency planning support and monitoring
  - Site and behavioral threat assessment
  - Consultation and direct response to critical incidents
  - Coordination with first responders, emergency operations, and senior leaders
  - Crisis recovery support

# Tools for Support

- Genetec: alarms, camera modernization
- Safe and secure entrances
- Controlled access (RFID Badge Access)
- School Gate Guardian (visitor management system)
- Intrado (communications)

# 2022–2023 Security Enhancements

## High Schools

- Community Outreach Groups

## Elementary & Middle

- Mobile security monitors

## MPS Properties

- Mobile security vehicle

## Athletics

- Game security

# Questions

**SECTION 1:            AMENDMENT** “Policy 5182: Dropping From Enrollment” of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

## AMENDMENT

### Policy 5182: Dropping From Enrollment

#### 1. **PURPOSE**

The purpose of this policy is to establish when the District ~~must~~<sup>may</sup> drop a student from enrollment due to the student’s attendance records, and what action the District shall take to enforce the compulsory instruction laws of the State of Minnesota.

#### 2. **GENERAL STATEMENT OF POLICY**

- a. Students who do not attend school during the defined school year for fifteen (15) consecutive school days shall be dropped from the rolls of the district, unless the District provides for instruction at home, <sup>or</sup> in a hospital or in another treatment facility, ~~or the absence is properly excused.~~
- b. Students who do not attend school during summer school sessions for five (5) consecutive school days shall be dropped from the rolls of the summer school program, unless the student receives instruction at home, in a hospital, or in another treatment facility, ~~or are otherwise properly excused.~~
- c. Students who are dropped from enrollment during the defined school year under paragraph 2.A. (above), shall be reported to the appropriate authorities under the compulsory instruction laws of the State of Minnesota.
- d. Students who are dropped from the rolls of the district under paragraph 2.A. (above) who return to school must reenroll in the district, and are not assured of their previous school assignment.
- e. The Principal or site administrator of the school to which a potentially dropped student is assigned due to the student’s last known residence or school identified by district records as the school of enrollment shall make reasonable efforts to return the non-attending child to the school of enrollment or to reenroll in school prior to dropping the student from enrollment.

#### 3. **RESPONSIBILITY**

- a. The Superintendent is authorized to promulgate regulations to implement this policy.
- b. The Superintendent shall report on compliance reporting to the Board of Directors.
- c. The Principal or site administrator is responsible for making reasonable efforts, including but not limited to arranging for home visits, phone calls, letters or other means of communication indicated by the parent to be the preferred method of contact, to determine whether non-attending assigned students should be dropped, reenrolled, or returned to school.

**Original Adoption:**

06/12/1984

**Revision Dates:**

3/26/2013

**Legal References:**

- Minn. Stat. §120A.22 (Compulsory Education)
- Minn. Stat. §120A.24 (Reporting)
- Minn. Stat. §120A.26 (Enforcement and Prosecution)
- Minn. Stat. §126C.05 (Definition of Pupil Units)

**MPS Policy Cross References:**

- Policy 5100 (Attendance)
- Policy 5120 (Age of Entrance)
- Policy 5181 (Exemption from Compulsory Instruction)

# Equity Considerations for Policies

## Attendance Policy 5182

January, 2023

### Policy Sponsor:

Email: Colleen.Kaibel@mpls.k12.mn.us

### MPS Equity and Diversity Policy 1304

"The Board of Directors, Superintendent and staff commit to conducting an Equity and Diversity Impact Assessment on *all future policies that have a significant impact on student learning and resource allocation*. This commitment also includes conducting assessments on *policies that are periodically reviewed and updated* through the policy development process that have a significant impact on student learning and resources allocation."

### Identify Your Policy Recommendation

Use the space below to identify your policy recommendation as either **1) an existing policy requiring no changes, 2) current policy with needed revisions, 3) current policy needing a repeal; policy no longer needed, 4) current policy needing a repeal; subsume some parts into other policies, or 5) a new policy.**

Current Policy 5182 with needed revisions.

### Recommended Policy Change

Provide a brief description below of the policy recommendation. If you have supporting documents, you may provide the URL for the EDIA Team to access your recommendation or attach the supporting documents in an email when you submit this document to the EDIA team.

### New Policy

If applicable, use the space below to summarize the new policy you recommend. If this is an existing policy with no changes needed, skip this question.

### Current Policy

If applicable, use the space below to summarize what the current policy states. Provide the URL for audiences to read the full board policy. If this is an existing policy with no changes needed, state that below.



[https://mps.municipalcodeonline.com/book?type=policies#name=Attendance\\_\(5100-5199\)](https://mps.municipalcodeonline.com/book?type=policies#name=Attendance_(5100-5199))

### **Policy 5182: Dropping from Enrollment**

#### **1. PURPOSE**

The purpose of this policy is to establish when the District may drop a student from enrollment due to the student's attendance records, and what action the District shall take to enforce the compulsory instruction laws of the State of Minnesota.

#### **2. GENERAL STATEMENT OF POLICY**

a. Students who do not attend school during the defined school year for fifteen (15) consecutive school days shall be dropped from the rolls of the district, unless the District provides for instruction at home, in a hospital or in another treatment facility, or the absence is properly excused.

b. Students who do not attend school during summer school sessions for five (5) consecutive school days shall be dropped from the rolls of the summer school program, unless the student receives instruction at home, in a hospital, or in another treatment facility, or are otherwise properly excused.

### ***Recommended Policy Change***

*If applicable, use the space below to summarize the recommended changes to the existing policy. If this is an existing policy with no changes needed, skip this question.*

#### **Policy 5182: Dropping From Enrollment**

##### **1. PURPOSE**

The purpose of this policy is to establish when the District ~~may~~ **must** drop a student from enrollment due to the student's attendance records, and what action the District shall take to enforce the compulsory instruction laws of the State of Minnesota.

##### **2. GENERAL STATEMENT OF POLICY**

a. Students who do not attend school during the defined school year for fifteen (15) consecutive school days shall be dropped from the rolls of the district, unless the District provides for instruction at home, in a hospital or in another treatment facility, ~~or the absence is properly excused.~~

b. Students who do not attend school during the defined school year for fifteen (15) consecutive school days shall be dropped from the rolls of the district, unless the District provides for instruction at home, in a hospital or in another treatment facility, ~~or the absence is properly excused.~~

### ***Additional Information***

*Use the space below to share additional information or context about the policy recommendation.*

Students who are receiving instruction at home, in a hospital, or in a treatment facility are to be enrolled in programming that matches the type of educational service provided. Nothing in this policy update shall be construed as waiving compulsory attendance or compulsory education provisions as cited in Minnesota State Law 120A.

## Completing the Following Sections

READ BEFORE COMPLETING THE FOLLOWING SECTIONS: If this is 1) a policy that requires no changes, 2) a policy with revisions that does not meet any of the activating thresholds, or 3) a policy with revisions that does not change the way that the district will carry out the policy, you do not need to complete the the remaining sections below. For all others, complete the following sections. Please reach out to the EDIA team for a consultation if you are unsure.

### Meaningful Inclusion of Diverse Perspectives on the Policy Recommendation

*Describe the ways in which you've worked to ensure that you have meaningfully included diverse perspectives from internal and external stakeholder groups in the policy recommendation process.*

*Explain who you engaged with, how they were engaged, and when these engagements took place. When explaining how you engaged with stakeholders, specify whether you informed (shared information with stakeholders), consulted (shared information with and gathered feedback from stakeholders), or collaborated (partnered with to inform, gather feedback, and co-constructed the policy recommendation).*

*If you had trouble with engagement, you could also use the space to identify ways you tried to engage stakeholders. You can also describe how you used information gathered in the past to inform your policy recommendation process.*

| <b><i>Internal Engagement including staff</i></b> | <b><i>External Engagement including students, families, and community members</i></b> |
|---------------------------------------------------|---------------------------------------------------------------------------------------|
| General Counsel, Student Accounting               |                                                                                       |

### Identify the Current Problem

*Describe what data (including conversations with stakeholders) tells you about possible existing student inequities. Include the evidence in this section or you may send the EDIA team the data that supports why there is a need to recommend the policy change.*

|                                                            |
|------------------------------------------------------------|
| Policy is not aligned with MN State Statute 126C.05 Subd.8 |
|------------------------------------------------------------|

*Describe what the potential root causes or factors are that contributed to the inequity - including factors that are within MPS' locus of control as well as factors that are outside of MPS' locus of control.*

*Naming what is within or outside of your locus of control informs decision makers about what possible measures may need to be taken, including legislative efforts and partnerships to be built to tackle the root causes.*

| <b><i>Root Causes or Factors<br/>(within MPS' locus of control)</i></b> | <b><i>Root Causes or Factors<br/>(outside of MPS' locus of control)</i></b> |
|-------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Update MPS Policy 5182 to reflect State Statute.                        |                                                                             |

## Equity Consideration if the Policy Recommendation is Approved/Implemented

Identify what practices and/or core functions may be impacted by the recommendation. This could include internal (division and/or department) team structures, staffing, roles, and responsibilities as well as any state or federal level mandates.

|  |
|--|
|  |
|--|

*Specify which student groups you anticipate will be positively impacted by the recommended policy change, and how.*

| <b><i>Group(s) Positively Impacted</i></b> | <b><i>How the Approved Recommended Policy will Positively Impact the Group(s)</i></b> |
|--------------------------------------------|---------------------------------------------------------------------------------------|
|                                            |                                                                                       |

Furthermore, identify which specific student groups may be negatively impacted by the policy recommendation and describe how you plan to mitigate the negative impact and/or harm.

| <b><i>Group(s) Negatively Impacted</i></b> | <b><i>Mitigation Plan</i></b> |
|--------------------------------------------|-------------------------------|
|                                            |                               |

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## Additional Information and Considerations

*Use the space below to share any additional information that would be helpful to know.*

|                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MPS Student Retention & Recovery has a rapid response team, We Want You Back, with staff who reach out to students/families dropped from enrollment due to 15 consecutive absences to identify barriers to attendance, create solutions, and offer support in re-enrolling in MPS. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Minneapolis Public Schools

### List A: All Employees: Tuesday, February 14, 2023

#### Hiring - Licensed

|                        |                                   |                             |           |
|------------------------|-----------------------------------|-----------------------------|-----------|
| Ashley Hanson          | Health Services                   | Teacher, School Nurse       | 2/13/2023 |
| Dexter Yee Yick        | Marcy Elementary                  | Teacher, Elementary         | 1/23/2023 |
| Gerae Stack            | River Bend Education Center       | Teacher, Special Education  | 1/9/2023  |
| Hayley Hofmar-Glennon  | Nellie Stone Johnson Elementary   | Teacher, Special Education  | 1/30/2023 |
| Katherine Urena Amparo | Emerson Elementary                | Teacher, Social Worker      | 1/24/2023 |
| Kilee Christnagel      | Teaching & Learning               | Teacher, TOSA General       | 1/9/2023  |
| Megan Krivinchuk       | Henry High                        | Teacher, Physical Education | 1/30/2023 |
| Melissa Thomas         | Ella Baker PK-8                   | Teacher, English            | 1/16/2023 |
| Natalie Fox            | Early Childhood Special Education | Teacher, Special Education  | 1/3/2023  |
| Sarah Dice             | FAIR High                         | Teacher, Special Education  | 1/23/2023 |
| Tressa Casey           | Health Services                   | Teacher, School Nurse       | 1/26/2023 |

#### Hiring - Non Licensed

|                           |                                |                                        |           |
|---------------------------|--------------------------------|----------------------------------------|-----------|
| Aaron Gilbert             | Accounting & Finance           | Accountant, Senior                     | 1/30/2023 |
| Alan Mariblanca           | AVID Tutors                    | AVID Assistant                         | 1/23/2023 |
| Aldo Cantellano           | Full-Service Community Schools | Coordinator, Full Serv Community Schls | 1/10/2023 |
| Aminah Vortice            | Harrison Education Center      | Special Education Assistant            | 2/13/2023 |
| Angela Dominguez-Orejuela | Transportation                 | Bus Aide                               | 2/6/2023  |
| Aynalem Tesema            | Engineers, Zone 2              | Custodian                              | 1/18/2023 |
| Ben Harlston              | Engineers, Zone 2              | Custodian                              | 1/11/2023 |
| Brian Jones               | River Bend Education Center    | Special Education Assistant            | 2/6/2023  |
| Brianne House             | Olson Middle                   | Special Education Assistant            | 1/30/2023 |

## Minneapolis Public Schools

### List A: All Employees: Tuesday, February 14, 2023

#### Hiring - Non Licensed

|                         |                               |                             |           |
|-------------------------|-------------------------------|-----------------------------|-----------|
| Brooke Dierkhising      | Roosevelt High                | Account Clerk, Senior       | 1/27/2023 |
| Candace Linares         | Transition Plus               | Special Education Assistant | 9/6/2022  |
| Chutiman Polsfuss       | CWS, Site Group 2 - Northeast | Food Service Assistant      | 1/19/2023 |
| Cory Brathall           | Enterprise Systems            | Information Systems Analyst | 1/31/2023 |
| Courtney Bolden         | Harrison Education Center     | Special Education Assistant | 1/24/2023 |
| Daequan Robertson-Jones | Transportation                | Bus Aide                    | 1/23/2023 |
| Damon Spriggs           | Engineers, Zone 1             | Custodian                   | 1/30/2023 |
| Dannielle Stanifer      | North High                    | Special Education Assistant | 1/30/2023 |
| Darryl Livingston       | Transportation                | School Bus Driver           | 1/11/2023 |
| Dejounte Straub         | Engineers, Zone 2             | Custodian                   | 1/18/2023 |
| Diane Dee               | Budget Operations             | Financial Analyst, Senior   | 2/7/2023  |
| Diyon Lee               | CWS, Site Group 2 - Northeast | School Cook                 | 1/19/2023 |
| Emily Newman            | IT Service Management         | IT Service Analyst          | 2/6/2023  |
| Gabriela Lazcano        | Emerson Elementary            | Associate Educator          | 1/31/2023 |
| Gail Freedman           | MPS Metro HA                  | Office Assistant            | 2/6/2023  |
| Gregory Marshall        | Olson Middle                  | Associate Educator          | 1/11/2023 |
| Jacob Conley            | Check and Connect             | Associate Educator          | 1/18/2023 |
| Jacob Hoffman           | Minneapolis Kids              | Child Care Assistant        | 1/30/2023 |
| Jairunnissa Yaseen      | Payroll                       | Payroll Analyst             | 1/17/2023 |
| Jakia Brown             | CWS, Site Group 5 - Southwest | Food Service Assistant      | 1/12/2023 |

## Minneapolis Public Schools

### List A: All Employees: Tuesday, February 14, 2023

#### Hiring - Non Licensed

|                  |                                        |                                  |           |
|------------------|----------------------------------------|----------------------------------|-----------|
| James Waller     | Marcy Elementary                       | Associate Educator               | 1/30/2023 |
| Joseph Carson    | CWS, Site Group 3 - Central West       | School Cook                      | 1/12/2023 |
| Joseph Frankel   | Engineers, Zone 2                      | Custodian                        | 1/30/2023 |
| Kara Cox         | Northeast Middle                       | School Secretary                 | 1/16/2023 |
| Katherine Garvey | Nellie Stone Johnson Elementary        | Associate Educator               | 1/9/2023  |
| Keannah Thao     | Hmong International Academy Elementary | Special Education Assistant      | 2/6/2023  |
| Kendra Williams  | CWS, Site Group 2 - Northeast          | Food Service Assistant           | 2/2/2023  |
| Khatera Herawie  | Payroll                                | Payroll Analyst                  | 1/17/2023 |
| Lashara Edmonds  | River Bend Education Center            | Special Education Assistant      | 1/24/2023 |
| Lashay Mckenzie  | Payroll                                | Payroll Analyst                  | 1/17/2023 |
| Maria Morales    | Engineers, Zone 1                      | Custodian                        | 1/11/2023 |
| Mary Miranda     | Lyndale Elementary                     | Special Education Assistant      | 1/9/2023  |
| Max Pardo        | Folwell Elementary                     | Special Education Assistant      | 2/6/2023  |
| Meeghan Passer   | Webster Elementary                     | Special Education Assistant      | 1/27/2023 |
| Meredith Jensen  | Folwell Elementary                     | School Success Program Assistant | 1/30/2023 |
| Molly Fuentes    | AVID Tutors                            | AVID Assistant                   | 1/17/2023 |
| Mustafa Musse    | Bryn Mawr Elementary                   | Associate Educator               | 1/30/2023 |
| Nasra Jimale     | Folwell Elementary                     | Special Education Assistant      | 1/9/2023  |
| Nicholas Smith   | Harrison Education Center              | Special Education Assistant      | 1/24/2023 |
| Nicholas Smith   | Harrison Education Center              | Special Education Assistant      | 1/24/2023 |
| Nicole Kutscher  | Olson Middle                           | Special Education Assistant      | 1/24/2023 |

## Minneapolis Public Schools

### List A: All Employees: Tuesday, February 14, 2023

#### Hiring - Non Licensed

|                   |                             |                             |           |
|-------------------|-----------------------------|-----------------------------|-----------|
| Pahli Vang        | Accounting & Finance        | Accountant                  | 2/6/2023  |
| Paullo Barbour    | Budget Operations           | Account Specialist          | 1/30/2023 |
| Raksana Denysenko | River Bend Education Center | Special Education Assistant | 1/11/2023 |
| Rena Littleton    | Olson Middle                | Health Services Assistant   | 1/3/2023  |
| Robert Larson     | Edison High                 | Special Education Assistant | 1/30/2023 |
| Shamaya Adkins    | River Bend Education Center | Special Education Assistant | 1/17/2023 |
| Shanitha Conner   | River Bend Education Center | Special Education Assistant | 1/24/2023 |
| Shauntel Shipman  | Jenny Lind Elementary       | Special Education Assistant | 1/30/2023 |
| Sophie Holbrook   | Whittier Elementary         | Associate Educator          | 1/31/2023 |
| Taneisha Miller   | Kenwood Elementary          | Health Services Assistant   | 1/23/2023 |
| Tyrone Jolly      | FAIR High                   | Security Monitor            | 2/6/2023  |
| Zachary Minn      | Minneapolis Kids            | Child Care Assistant        | 1/9/2023  |

**Discharges****Licensed**

|         |            |                 |
|---------|------------|-----------------|
| Teacher | 02-14-2023 | 2023-02-ER-5393 |
|---------|------------|-----------------|

**Non-Licensed****Probationary Separations****Licensed**

|                     |            |                 |
|---------------------|------------|-----------------|
| Teacher             | 03-05-2023 | 2023-02-ER-5455 |
| Teacher             | 03-03-2023 | 2023-02-ER-5491 |
| Assistant Principal | 02-24-2023 | 2023-02-ER-5470 |
| Teacher             | 03-04-2023 | 2023-02-ER-5486 |

**Licensed, Staff Reduction****Non-Licensed**

|                          |            |                 |
|--------------------------|------------|-----------------|
| Office Assistant         | 01-10-2023 | 2023-02-ER-5450 |
| Food Service Assistant   | 01-23-2023 | 2023-02-ER-5469 |
| Child Care Assistant     | 01-26-2023 | 2023-02-ER-5475 |
| School Secretary         | 02-10-2023 | 2023-02-ER-5502 |
| CWS Production Assistant | 01-12-2023 | 2023-02-ER-5458 |
| Associate Educator       | 02-06-2023 | 2023-02-ER-5501 |

**Non-Licensed, Staff Reduction****Licensed, Discontinuance of Contract****Layoffs****Licensed****Non-Licensed****Administrative Contract Non-Renewals**



**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND**

Change Inc.

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Change Inc.) dated 1/23/2023 ("Contract") is made and entered into by and between Special School District No.1 ("District") and Change Inc. ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law (District") and Change Inc. ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 8/16/2022 through 6/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001476

1. *Original contract amount:* \$125,000
2. *Accumulative contract amount:* 155,000

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

**Section:** This Contract is entered into between Special School District No. 1, "District", a special school district created and existing under the laws of Minnesota, and Change Inc, "Contractor" (collectively "parties") and will provide Mental Health Services at Edison High School, Jefferson Community, Green Central, Hmong Academy, Pillsbury, Marcy, Northeast Middle, Waite Park, Sheridan and Transition Plus, Stadium View and Anwatin Schools.

3.1 Total Obligation. District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses, shall not exceed \$155,000. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract

**Description: Provide school mental health services to Anwatin School.**

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

Updated January, 2020

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name:

Title: Click or tap here to enter text.

Date: \_\_\_\_\_

Change Inc:

Signature: Jody Nelson

Name: Jody Nelson

Title: Executive Director

Date: 1/23/2022

## **21ANDE001**

### **Phase 3: Andersen United Middle School Renovations**

**Contract Sum: \$5,933,219.00**

**Contractor: Construction Results Corporation**

#### **Project Name and Number**

21ANDE001

Phase 3: Andersen United Middle School Renovations

1098 Andersen Lane

Minneapolis, MN 55407

#### **Description**

Completion of the full-preparation kitchen space, creation of a cafetorium space adjacent to the new kitchen, and restroom updates.

#### **Contract Documents**

AIA Document A101-2017

AIA Document A101 Exhibit A-2017

Exhibit B – Project Charter

Exhibit C – Owner Insurance

Exhibit D – Project Schedule

AIA Document E203-2013

AIA Document A201-2017



# AIA® Document A101® – 2017

## **Standard Form of Agreement Between Owner and Contractor** where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the 14th day of February in the year 2023  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

and the Contractor:  
(Name, legal status, address and other information)

Construction Results Corporation  
5465 Highway 169 North  
Plymouth, MN 55442

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

Phase 3: Andersen United Middle School Renovations  
1098 Andersen Lane  
Minneapolis, MN 55407

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

Wold Architects and Engineers  
332 Minnesota Street, Suite W2000  
Saint Paul, MN 55101

The Owner and Contractor 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.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

### § 3.3 Substantial Completion

**§ 3.3.1** The Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

Init.

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**User Notes:**

(3B9ADA44)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ X ] By the following date: Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table Deleted)*

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### **ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

#### **§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Table Deleted)*

**§ 4.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

#### **§ 4.5 Liquidated damages**

Init.

*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

*damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.*

*(Paragraph Deleted)*

*After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

## **ARTICLE 5 PAYMENTS**

### **§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Architect, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

*(Paragraph Deleted)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;

Init.

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

#### **§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Paragraph Deleted)*

5% (five percent)

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:

*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*

determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

*(Paragraph Deleted)*

**§ 5.1.8** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

#### **§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and



- .2 a final Certificate for Payment has been issued by the Architect.  
.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

### **§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.  
*(Paragraph Deleted)*

### **§ 5.4 Prompt Payment to Subcontractors**

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. 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 party responsible for payment shall pay the actual penalty due to the party requesting payment.

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017.

#### **§ 6.1.1 Mediation**

Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

*If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.*

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

### **§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:  
*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction

☐ Other (*Specify*)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## **ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)*

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner’s representative:

*(Name, address, email address, and other information)*

Jessica Pavelka  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**§ 8.3** The Contractor’s representative:

*(Name, address, email address, and other information)*

Construction Results Corporation  
5465 Highway 169 North  
Plymouth, MN 55442

**§ 8.4** Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

## § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

## § 8.7 Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2020

- .5 Drawings

**Number**

**Title**

**Date**

- .6 Specifications

**Section**

**Title**

**Date**

**Pages**

- .7 Addenda, if any:

**Number**

**Date**

**Pages**

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

*(Paragraphs Deleted)*

[EXH-B Project Charter](#)

Init.

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**User Notes:**

(3B9ADA44)

(Paragraph Deleted)

EXH-C Owner Insurance  
EXH-D Project Schedule

(Paragraph Deleted)

(Table Deleted)

[ ] Supplementary and other Conditions of the Contract:

| Document                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Title | Date | Pages |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------|-------|
| <b>.9</b> Other documents, if any, listed below:<br><i>(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)</i> |       |      |       |

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

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
(Printed name and title)

*M. Luurtsema*

\_\_\_\_\_  
**CONTRACTOR** (Signature)

\_\_\_\_\_  
**Mike Luurtsema, President**  
(Printed name and title)

Init.

# Additions and Deletions Report for AIA® Document A101® – 2017

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 08:42:14 CT on 01/06/2023.

## PAGE 1

**AGREEMENT** made as of the 14th day of February in the year 2023

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Construction Results Corporation  
5465 Highway 169 North  
Plymouth, MN 55442

...

Phase 3: Andersen United Middle School Renovations  
1098 Andersen Lane  
Minneapolis, MN 55407

...

Wold Architects and Engineers  
332 Minnesota Street, Suite W2000  
Saint Paul, MN 55101

## PAGE 2

[ X ] A date set forth in a notice to proceed issued by the Owner.

...

**§ 3.3.1** ~~Subject to adjustments of the Contract Time as provided in the Contract Documents, the~~ The Contractor shall achieve Substantial Completion of the entire Work:

## PAGE 3

[ X ] By the following date: Defined in EXH-D Project Schedule

...

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following ~~dates~~: dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

...

**Portion of Work**

**Substantial Completion Date**

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract~~. ~~The Contract Sum shall be (\$ )~~; Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** Alternates, if any, included in the Contract ~~Sum~~: Sum are defined in EXH-B Project Charter.

...

**Item**

**Price**

...

**§ 4.2.2** Subject to the conditions noted ~~below~~, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

...

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

...

**Item**

**Price**

**Conditions for Acceptance**

...

**§ 4.3** Allowances, if any, included in the Contract ~~Sum~~: Sum are defined in EXH-B Project Charter.

...

*(Identify each allowance.)*

...

**Item**

**Price**

...

**§ 4.4** Unit prices, if ~~any~~ any are defined in EXH-B Project Charter.

...

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

...

**Item**

**Units and Limitations**

**Price per Unit (\$0.00)**

...

**§ 4.5** Liquidated ~~damages~~, if ~~any~~ damages

**PAGE 4**

*(Insert terms and conditions for liquidated damages, if any.) Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

...

damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the

...

Owner.

...

**§ 4.6** Other:

...

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.) After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

...

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month~~, or as follows: month.

...



~~§ 5.1.3 Provided that When an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.~~

...

~~(Federal, state or local laws may require payment within a certain period of time.)~~

...

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

## PAGE 5

~~(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)~~

...

5% (five percent)

...

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

...

~~(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.) Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as~~

...

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows: determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect



and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

...

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the ~~site~~ site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

## PAGE 6

.3 all lien waivers and IC134 forms have been delivered to the Owner.

...

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ 45 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~

...

Payment.

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

...

*(Insert rate)*

...

## **§ 5.4 Prompt Payment to Subcontractors**

...

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of interest agreed upon, if any, payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party

requesting payment on any undisputed amount not paid on time. 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 party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless A201–2017.

...

### **§ 6.1.1 Mediation**

...

the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

...

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

...

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.) If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.*

...

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

## **PAGE 7**

**[ X ]** Litigation in a court of competent jurisdiction

...

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

...

Jessica Pavelka  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Construction Results Corporation  
5465 Highway 169 North  
Plymouth, MN 55442

## PAGE 8

Owner prohibits Contractor from using the Work in any marketing material or business development practice.  
Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the  
Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2020

...

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

...

☐ AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:

...

[EXH-B Project Charter](#)

## PAGE 9

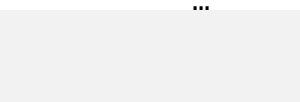
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

...

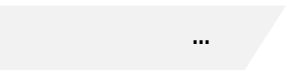
[EXH-C Owner Insurance](#)

...

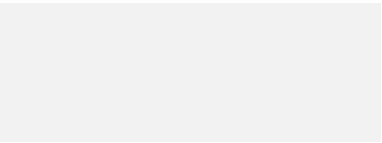
[EXH-D Project Schedule](#)



[ - ] The Sustainability Plan:



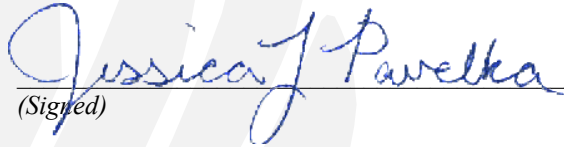
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## **Certification of Document's Authenticity**

**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 08:42:14 CT on 01/06/2023 under Order No. 2114296869 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

Manager, Capital Planning & Construction  
(Title)

01/06/2023  
(Dated)



# AIA® Document A101® – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 14th day of February in the year 2023  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

Phase 3: Andersen United Middle School Renovations  
1098 Andersen Lane  
Minneapolis, MN 55407

**THE OWNER:**  
(Name, legal status and address)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**THE CONTRACTOR:**  
(Name, legal status and address)

Construction Results Corporation  
5465 Highway 169 North  
Plymouth, MN 55442

### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### 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.

This document is intended to be used in conjunction with AIA Document A201®-2017, General Conditions of the Contract for Construction. Article 11 of A201®-2017 contains additional insurance provisions.

## § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

## § A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

### Causes of Loss

### Sub-Limit

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

### Coverage

### Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

## § A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

#### § A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

#### § A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

Init.

/



(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

[ ] **§ A.2.5.2 Other Insurance**  
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

### ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

#### § A.3.1 General

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

#### § A.3.2 Contractor's Required Insurance Coverage

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

#### § A.3.2.2 Commercial General Liability

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;

Init.

- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

*(Paragraph deleted)*

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

### **§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

**Type**

**Penal Sum (\$0.00)**

Payment Bond

Performance Bond

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

# Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

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 08:43:12 CT on 01/06/2023.

## PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 14th day of February in the year 2023

...

Phase 3: Andersen United Middle School Renovations  
1098 Andersen Lane  
Minneapolis, MN 55407

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Construction Results Corporation  
5465 Highway 169 North  
Plymouth, MN 55442

## PAGE 2

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

## PAGE 4

§ A.3.2.1 The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~—(\$ —) each occurrence, —(\$ —) general aggregate, and —(\$ —) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~—(\$ —) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage,~~ as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits,~~ limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability with policy limits not less than ~~—(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit,~~ Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate,~~ as defined in EXH-C Owner Insurance.

**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate,~~ as defined in EXH-C Owner Insurance.

**PAGE 6**

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)* types and limits of insurance as defined in EXH-C Owner Insurance.

☐ **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to

the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

- ☐ **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than  (\$ ) per claim and  (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.
- ☐ **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than  (\$ ) per claim and  (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- ☐ **§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all risks" completed value form.**
- ☐ **§ A.3.3.2.5 Property insurance on an "all risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.**
- ☐ **§ A.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

#### Coverage

#### Limits

### § A.3.4 Performance Bond and Payment Bond



## Exhibit B – Project Charter

### Project Name and Number

21ANDE001

Phase 3: Andersen United Middle School Renovations

1098 Andersen Lane

Minneapolis, MN 55407

### Description

Completion of the full-preparation kitchen space, creation of a cafetorium space adjacent to the new kitchen, and restroom updates.

### Contract Sum

The Contract Sum shall be \$5,933,219.00

### Contract Sum details

| Item                                    | Price       | Status   |
|-----------------------------------------|-------------|----------|
| Base Bid                                | \$5,243,219 | accepted |
| Alt #1: Vertical Circulation            | \$56,000    | accepted |
| Alt #2: Decommission Kitchens           | \$54,000    | accepted |
| Alt #3: Stage Platform and AV Equipment | \$375,000   | accepted |
| Alt #4: East Toilet Room                | \$205,000   | accepted |
| Unit Pricing #1 – Wedges/Grippers       | \$250/each  | rejected |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:

The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

- a. Worker's Compensation and Employer's Liability Insurance

- i. Coverage A is statutory.
- ii. Coverage B
  - \$500,000 Each Accident
  - \$500,000 Each Employee
  - \$500,000 Policy Limit (Disease)

- b. Comprehensive General Liability Insurance \*

|                                         |             |
|-----------------------------------------|-------------|
| General Aggregate                       | \$1,000,000 |
| Products/Completed Operations Aggregate | \$1,000,000 |
| Per Occurrence                          | \$1,000,000 |
| Medical Payments                        | \$10,000    |

\* The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

- c. Automobile Insurance

|                       |             |
|-----------------------|-------------|
| Per Occurrence        | \$1,000,000 |
| PIP                   | Basic       |
| Underinsured Motorist | \$1,000,000 |
| Uninsured Motorist    | \$1,000,000 |

- d. Professional Liability Insurance

- i. Per Claim
- |  |             |
|--|-------------|
|  | \$2,000,000 |
|--|-------------|



- ii. For projects with an estimated construction Contract Sum of over \$10,000,000 or major structural work an aggregate is required as follows:
 

|           |             |
|-----------|-------------|
| Aggregate | \$4,000,000 |
|-----------|-------------|
- e. Umbrella Liability Insurance
  - i. Per Occurrence \$2,000,000
  - ii. For projects with an estimated construction Contract Sum of over \$10,000,000 or major structural work an aggregate is required as follows:
 

|           |             |
|-----------|-------------|
| Aggregate | \$2,000,000 |
|-----------|-------------|
- f. Manned or Unmanned Aircraft Coverage (if used)
  - i. Per Claim \$1,000,000
  - ii. Aggregate \$1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are \$1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

## 2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in addition to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

### 3. PROFESSIONAL LIABILITY INSURANCE

- a. Professional Liability Coverage of \$2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below \$2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."
- b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.
- c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

### 4. COVERAGE

The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

### 5. GENERALLY

- a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

- b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

### 1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017

The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

#### a. Commercial General Liability

|                                             |             |
|---------------------------------------------|-------------|
| i. General Aggregate                        | \$1,500,000 |
| ii. Products/Completed Operations Aggregate | \$1,500,000 |
| iii. Per Occurrence                         | \$1,500,000 |

The Owner shall be named as additional insured for Commercial General Liability Insurance

#### b. Automobile Insurance

|                            |             |
|----------------------------|-------------|
| i. Per Occurrence          | \$1,000,000 |
| ii. PIP                    | Basic       |
| iii. Underinsured Motorist | \$1,000,000 |
| iv. Uninsured Motorist     | \$1,000,000 |

#### c. Workers Compensation

- i. Coverage A is statutory.
- ii. Coverage B \$500,000 Each Accident
- iii. \$500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

- i. Per Claim \$2,000,000

For Projects with an estimated construction cost of over \$10,000,000 or major structural work, additional Aggregate coverage of \$4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

- i. Per Claim \$1,000,000
- ii. Aggregate \$1,000,000

f. Property Insurance

- i. Per Claim \$1,000,000
- ii. Aggregate \$1,000,000

This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders "all risk" Insurance

- i. Per Claim \$2,000,000
- ii. Aggregate \$4,000,000

This insurance is only required for additions exceeding \$10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

- i. Aggregate limit \$5,000,000

This insurance is required only for projects larger than \$10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## Project Name and Number

21ANDE001  
Phase 3: Andersen United Middle School Renovations  
1098 Andersen Lane  
Minneapolis, MN 55407

## Description

Completion of the full-preparation kitchen space, creation of a cafetorium space adjacent to the new kitchen, and restroom updates.

## Schedule

### Substantial Completion

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
| Phase 1A and 1B | August 18, 2023             |
| Phase 2         | November 17, 2023           |

### Final Completion

January 19, 2024

## ***Building Information Modeling and Digital Data Exhibit***

This Exhibit dated the 13 day of March in the year 2018 is incorporated into the agreement (the “Agreement”) between the Parties for the following Project:  
(*Name and location or address of the Project*)

### **TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS**
- 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**
- 3 DIGITAL DATA PROTOCOLS**
- 4 BUILDING INFORMATION MODELING PROTOCOLS**
- 5 OTHER TERMS AND CONDITIONS**

### **ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

### **§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and memorialized in AIA Documents G201–2013 and G202–2013, will result in a change in the Party’s scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party’s waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

### **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.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

## **§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the “Model,” which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term “Authorized Uses” refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as “confidential.”

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, “written” or “in writing” shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, “written notice” shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms “Party” and “Parties” refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

## ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

**§ 2.1** The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| Anticipated Digital Data                | Applicability to the Project<br><i>(Indicate Applicable or Not Applicable)</i> | Location of Detailed Description<br><i>(Section 3.1.1 below or in an attachment to this exhibit and identified below)</i> |
|-----------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Project Agreements and Modifications    |                                                                                |                                                                                                                           |
| Project communications                  |                                                                                |                                                                                                                           |
| Architect's pre-construction submittals |                                                                                |                                                                                                                           |
| Contract Documents                      |                                                                                |                                                                                                                           |
| Contractor's submittals                 |                                                                                |                                                                                                                           |
| Subcontractor's submittals              |                                                                                |                                                                                                                           |
| Modifications                           |                                                                                |                                                                                                                           |
| Project payment documents               |                                                                                |                                                                                                                           |
| Notices and claims                      |                                                                                |                                                                                                                           |
| Building Information Modeling           |                                                                                |                                                                                                                           |
|                                         |                                                                                |                                                                                                                           |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.



**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.

*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*

**§ 3.2.2** The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.

**§ 3.2.3** The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.

#### **§ 3.4 Unauthorized Use**

##### **§ 3.4.1 Prior to Establishment of Digital Data Protocols**

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

##### **§ 3.4.2 Following Establishment of Digital Data Protocols**

Following agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

#### **§ 3.5 Digital Data Management**

**§ 3.5.1** Centralized electronic document management system use on the Project shall be:

*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

☒ **[ X ]** The Parties intend to use a centralized electronic document management system on the Project.

☐ **[ ]** The Parties do not intend to use a centralized electronic document management system on the Project.

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth in the latest version of G201–2013 approved by the Project Participants.

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)

Responsible Project Participant

Project Milestone

#### ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

§ 4.1 If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:

[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

§ 4.2 **Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

Project Portion for Modeling

Responsible Project Participant

§ 4.3 **Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants and further described for each LOD in AIA Document G202–2013.

Authorized Uses of the Model for the Project are defined in Article 7 of AIA B101-2017.

§ 4.4 **Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.

(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)

Defined in EXH-B Project Design Milestones & Deliverables to AIA B101-2017.

§ 4.5 **Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

§ 4.5.1 The Modeling protocols shall address the following:

- .1 Identification of the Model Element Authors;
- .2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
- .3 Identification of the required LOD of each Model Element at each identified Project milestone;
- .4 Identification of the construction classification systems to be used on the Project;
- .5 The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
- .6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
- .7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;

Init.

- .8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
- .9 Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.  
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.

**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

#### **§ 4.7 Unauthorized Use**

##### **§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

##### **§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

#### **§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

**Responsible Project Participant**

**Project Milestone**

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- .1 Model origin point, coordinate system, precision, file formats and units. The Model shall be accurately geo-located.
- .2 Model file storage location(s)
- .3 Processes for transferring and accessing Model files
- .4 Naming conventions as defined in the Owner's Revit and Drafting Standards.
- .5 Processes for aggregating Model files from varying software platforms

Init.

- .6 Model access rights
- .7 Identification of design coordination and clash detection procedures.
- .8 Model security requirements
- .9 Other: *(Identify additional Model management protocols to be addressed.)*

The Project Participant responsible for managing the Model shall use the issued MPS Revit template and conform to MPS Revit and Drafting Standards as defined in EXH-C.2 Quality Performance and Owner Provisions of AIA B101-2017.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- .1 Collect incoming Models:
  - .1 Coordinate submission and exchange of Models
  - .2 Create and maintain a log of Models received
  - .3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
  - .4 Maintain a record copy of each Model file received
- .2 Aggregate Model files and make them available for Authorized Uses
- .3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
- .4 Manage Model access rights
- .5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.  
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model                | Applicability to Project<br><i>(Applicable or Not Applicable)</i> | Responsible Project Participant | Location of Detailed Description of Requirements and Services<br><i>(Section 4.10 below or in an attachment to this exhibit and identified below)</i> |
|----------------------------------------|-------------------------------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>§ 4.9.1</b> Remodeling              | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.2</b> Wayfinding and Mapping  | Applicable                                                        | Architect                       |                                                                                                                                                       |
| <b>§ 4.9.3</b> Asset/FF & E Management | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.4</b> Energy Management       | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.5</b> Space Management        | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.6</b> Maintenance Management  | Applicable                                                        | Owner                           |                                                                                                                                                       |
|                                        |                                                                   |                                 |                                                                                                                                                       |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of basic services, the Architect shall produce wayfinding floor plans for use of the Owner. Floor plans shall be provided in PDF format to be printed on letter, 11x17 and 24x36 paper.

#### **ARTICLE 5 OTHER TERMS AND CONDITIONS**

Other terms and conditions related to the transmission and use of Digital Data are as follows:



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## PAGE 1

This Exhibit dated the 13 day of March in the year 2018 is incorporated into the agreement (the “Agreement”) between the Parties for the following Project:

## PAGE 4

☒ The Parties intend to use a centralized electronic document management system on the Project.

## PAGE 5

☒ The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Authorized Uses of the Model for the Project are defined in Article 7 of AIA B101-2017.

...

Defined in EXH-B Project Design Milestones & Deliverables to AIA B101-2017.

## PAGE 6

.1 Model origin point, coordinate system, precision, file formats and ~~units~~units. The Model shall be accurately geo-located.

...

.4 Naming conventions as defined in the Owner's Revit and Drafting Standards.

## PAGE 7

The Project Participant responsible for managing the Model shall use the issued MPS Revit template and conform to MPS Revit and Drafting Standards as defined in EXH-C.2 Quality Performance and Owner Provisions of AIA B101-2017.

...

|         |                         |                   |                  |  |
|---------|-------------------------|-------------------|------------------|--|
| § 4.9.1 | Remodeling              | <u>Applicable</u> | <u>Owner</u>     |  |
| § 4.9.2 | Wayfinding and Mapping  | <u>Applicable</u> | <u>Architect</u> |  |
| § 4.9.3 | Asset/FF & E Management | <u>Applicable</u> | <u>Owner</u>     |  |

|         |                        |                   |              |  |
|---------|------------------------|-------------------|--------------|--|
| § 4.9.4 | Energy Management      | <u>Applicable</u> | <u>Owner</u> |  |
| § 4.9.5 | Space Management       | <u>Applicable</u> | <u>Owner</u> |  |
| § 4.9.6 | Maintenance Management | <u>Applicable</u> | <u>Owner</u> |  |

**PAGE 8**

As part of basic services, the Architect shall produce wayfinding floor plans for use of the Owner. Floor plans shall be provided in PDF format to be printed on letter, 11x17 and 24x36 paper.





## **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 12:15:52 on 03/23/2018 under Order No. 8259021829 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ - 2013, Building Information Modeling and Digital Data Exhibit, 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)*



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:  
(Name and location or address)

**THE OWNER:**  
(Name, legal status and address)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**THE ARCHITECT:**  
(Name, legal status and address)

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503<sup>™</sup>, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or Suppliers who provide labor and/or materials for the Work.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017.

## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.4.2

In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Owner/Contractor Agreement;
2. All Addenda to the Agreement with those of later date having precedence over those of earlier date;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications;
6. Drawings, with larger scale drawings having precedence over smaller scale drawings.

In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

## § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

#### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

#### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### **ARTICLE 2 OWNER**

#### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within thirty (30) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

#### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract

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Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1 and other obligations, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a



Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

### **§ 3.1.2**

The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on site. This shall not relieve Contractor from obligations under 3.2.2.1.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

#### **§ 3.2.1** The Contractor

shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.3 and shall immediately report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may

discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's

warranty under Paragraph 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

**§ 3.2.2** The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Paragraph 3.12.

**§ 3.2.3** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Field Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

**§ 3.3.5** The Contractor shall at all times make reasonable provisions to protect any work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent

and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the contractor.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the project substitute materials, products, or equipment approved by Owner during the bidding period.

**§ 3.4.5** The Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available cash discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.6** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such  
**Substitutions.**

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its



responsibilities.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. All communications given to the superintendent shall be confirmed in writing to the Contractor upon written request of either or both the superintendent and Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall preplace the Superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted by the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner as required to complete routine inspections by Architect and Owner prior to any approval of payments to the Contractor, and delivered to the Architect for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.1** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

### § 3.12 Shop Drawings, Product Data and Samples

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been accepted by the Architect.

**§ 3.12.8** The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued

authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.



**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this paragraph. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this paragraph.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorney's fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within 60 days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** In the event the employment of the Architect is terminated, the Owner may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 4.1.4** Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to action at law as provided in Paragraph 15.3.

#### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's consultant (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

**§ 4.2.3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons performing portions of the Work.

#### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect and the Contractor to comply with Owner requirements in regards to public communications and site signage.

**§ 4.2.5** Based on the Architect's observations and valuations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the 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, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will and the Owner may review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals by the Architect or the Owner is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's or the Owner's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's or the Owner's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's or Owner's acceptance of a specific item shall not indicate acceptance of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract

Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any subcontractor or use any material to which the Architect or Owner may object as incompetent or unfit, or where there is reason to assume the Work will not be accomplished in accordance with the Contract Documents. Prior to the employment of the named subcontractors, the Contractor must obtain the Owner's approval of such subcontracts for the designated portion of the Work.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.2.1** The right to reject any Subcontractor or Sub-subcontractor will be exercised by the Owner or the Architect when in the reasonable opinion of either of them the proposed Subcontractor or Sub-subcontractor:

1. cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
2. cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of craft;
3. lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor or Sub-subcontractor is proposed;
4. has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
5. cannot satisfactorily perform the part of the Work for which the Subcontractor or Sub-subcontractor is proposed within the time schedule, due to financial status, size of organization, existing workload or other considerations;
6. cannot demonstrate ability, through examples of representative work, to perform the part of the Work for which the Subcontractor or Sub-subcontractor is being considered; or
7. exhibits other factors bearing on the probability of unsatisfactory performance.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference, in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Any proposed substitution or a subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner and the Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

## **§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the



Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor, not the Owner, is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

#### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. The Contractor shall schedule, coordinate, and cooperate fully with all other contractors. The

Contractor shall take all reasonable steps necessary to assure scheduling, coordination, and cooperation among the contractors.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

## **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not reasonably discoverable.

**§ 6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

## **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** The amount of credit to be allowed by the contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after

consultation with the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Paragraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost,
2. For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
4. For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor.
5. Costs to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

## **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Orders shall be prepared on AIA Document G701.

## **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding \$25,000. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order 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. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.



§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

## § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents..

§ 8.2.4 Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

§ 8.2.5 Timely final Completion of the Project being of critical importance to the Owner, Contractor agrees that they shall substantially complete all Work under the Contract documents within the time established herein and that they shall finally complete the Work in the detail required and in the time required by the Contract Documents.

§ 8.2.6 To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

1. Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
2. Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
3. Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
4. Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
5. Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: 1) planning for the next two weeks; 2) work completed for the previous week; 3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor

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disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts, and the Architect determines, justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect only under the following conditions:

1. Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their subcontractors and suppliers.
2. In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
3. Any unusual delay in deliveries will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
4. With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given for unseasonably favorable weather;
5. Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
6. A delay in the overall Project progress actually occurred and clearly disrupted the total Project programs as a result of one of the valid causes for time extension. An extension of time for parts, phases, or stages may be granted where a valid delay indicated such partial time extension is justified;
7. No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
8. Delays by subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Subparagraph 8.3.1.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum. This is subject to the right of either party to disagree and assert a claim in accordance with Article 15.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

## **§ 9.2 Schedule of Values**

Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. The schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

## **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason.

**§ 9.3.1.2** Following certification of the Application for Payment by the Architect, the Owner shall pay 95% of its value, retaining 5% until Final Completion.

**§ 9.3.1.3** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

**§ 9.3.4** In each Application for Payment, the contractor shall certify as follows: "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.



**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statute 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statute 471.425, Subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If

approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### **§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon ten (10) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be accomplished as provided in Article 7.

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and when the Architect issues a certificate of Substantial Completion.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list.

Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.6.1** The retainage is for the performance of the Contractor. Nothing in this Agreement connects the retainage to the Subcontractors. Upon satisfactory completion of the Project, and full payment by the Owner to the Contractor for the Work of any Subcontractor, the Subcontractor is to be paid in full. The Owner, at its sole discretion, may continue or make adjustments of the full retainage for the performance of the Contractor.

**§ 9.8.6.2** Prior to requesting a reduction of retainage, the Contractor shall obtain in writing an agreement from the Surety agreeing to such a reduction. In reducing retainage, the Contractor shall use the retainage to make full payment to Subcontractors who have completed 100% of their work. The Contractor shall provide to the Owner documentation of payment to Subcontractors and an agreement for retainage deduction from the Surety of the Subcontractor.

**§ 9.8.7** The Architect shall make inspection(s) for Substantial Completion and Final Completion in accordance with the AIA Document B101 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties,

such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **§ 9.11 DAMAGES FOR DELAY**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule.

**§ 9.11.2** If the Contractor is delayed by the Owner, Architect, or any agent or employee of any of the foregoing, the Contractor's sole and exclusive remedy for the delay shall be the right to a time extension for completion of the Contract and not damages. This paragraph does not preclude Contractor's recovery of damage for contractor-caused delays under other provisions of the Contract Documents.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to



- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### **§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 15.1.4 and 15.1.5.

### **§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCV) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

1. Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
2. The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or

contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.

**§ 10.3.4** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes Section 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

**§ 10.4** The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

## **§ 10.5 MISCELLANEOUS GENERAL PROVISIONS**

**§ 10.5.1** In occupied facilities from the time the Work is begun until the Contract is completed, the Contractor shall be responsible for coordinating care and control of their contracted responsibilities with the Owner on the construction premises. The Contractor shall maintain all the Contractor's Work areas on the Project site in first class condition during term of operation under this Contract.

**§ 10.5.2** The Contractor shall give full protection to existing adjacent buildings and occupants. The Contractor shall replace or repair, at the Contractor's own expense, all damage to existing buildings, sidewalks, curbs, drives, fences, planters, signage, monuments, lawns, plants, trees, and shrubbery arising as a result of Work performed under the Contract.

**§ 10.5.3** Utilities encountered, whether shown on Project Drawings or not, shall be protected and maintained in service until moved or abandoned. The Contractor shall exercise care in the excavation around such utilities as may be shown on the Project Drawings or otherwise found, and which are not to be moved, replaced, or abandoned, and shall restore any damaged items or Work to the same conditions (or better) as existed prior to starting Work. Utilities or other service shown to be abandoned shall be maintained in service until facilities are provided, tested, and ready to use. The Contractor shall take all reasonable precautions in working in the area of excavation to avoid personal injury or property damage resulting from interception or interruption of electrical, telephone, sewer, water, gas, or other services, and shall also cause all Subcontractors, Sub-subcontractors material suppliers, laborers, and other persons on the construction premises to take such precautions. The location and nature of such concealed or buried services is not guaranteed or completely indicated by Owner or Architect.

**§ 10.5.4** The Contractor shall at all times take reasonable and adequate precautions to protect the Work from damage by the elements, including flooding, rainstorms, windstorms, and any other elements or natural events, etc., and shall not expose the Work of any other contractor to such damages. Where the Contractor, any Subcontractor, or any Sub-subcontractor prepares or erects any material during any season of the year when freezing weather may be anticipated, the Contractor shall employ (and shall cause such Subcontractor or Sub-subcontractor to employ) such methods as may be necessary to render such Work equal in every respect to similar Work done under favorable conditions and the Contractor shall exercise (and shall cause any such Subcontractor or Sub-subcontractor to exercise) reasonable care and diligence to prevent its damage or deterioration. The Contractor shall be responsible for maintaining the building in a dry condition until acceptance. The Contractor shall be responsible for any damage from water, as well as for damage, collapse, or failure of any part of the building caused by excess water undermining or creating pressures on the structures.

**§ 10.5.5** The Contractor shall not use any internal combustion machinery that causes noxious, harmful, or toxic fumes inside an enclosed building. When use of internal combustion machinery is unavoidable inside enclosed buildings, the Contractor shall obtain written approval from the Owner prior to use of the machinery and shall provide full ventilation to the outside of the enclosed building for the exhaust of the internal combustion machinery. The Contractor shall locate internal combustion machinery outside an enclosed building so that the exhaust fumes will not enter the building through vent ducts, doors, windows, or other openings in the building.

**§ 10.5.6** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all reasonable costs and expenses thereby incurred.

## **§ 10.6 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C.3 Owner Insurance, or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C.3 Owner Insurance and shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from



an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Paragraph Deleted)*

## **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Architect within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## **§ 12.2 Correction of Work**

### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby.

### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** If, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner and/or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner and/or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner and/or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation from the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the contract documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give a minimum of two (2) working days' notice to the Architect of when and where tests and inspections are to be made so that the Architect may observe procedures. The Owner shall bear such costs, except as provided in Subparagraph 13.4.3.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.



§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## § 13.5 NON-DISCRIMINATION

§ 13.5.1 All contracts between the Owner and companies providing goods and services under the Contract Documents (including the Architect and Contractor) shall contain the following equal opportunity and civil right clause:

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the provider shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The provider shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The provider acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.5.2 During the completion of the work and all other services required by the Contract Documents, the Architect and Contractor agree that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Architect and Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Architect and Contractor acknowledge that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.6 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the

representations of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

*(Paragraph Deleted)*

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

##### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

##### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the

condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action. A decision by the Architect, as provided by Subparagraph 15.2.2, shall be required as a condition precedent to action at law or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless if (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to action at law or litigation in the event (1) the position of  
*(Paragraph Deleted)*

Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 15.2.2 within the ten (10) days after the Claim is made, (4) ten (10) days, which decision shall be final subject to action at law as provided in paragraph 15.3. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part stating reasons for the rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or



requested by the Architect, the Architect shall notify the parties in writing that the Architect's decision will be made within ten (10) days, which decision shall be final subject to action at law as provided in Paragraph 15.3.

**§ 15.2.3** If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

**§ 15.2.4** If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim, or (3) notify the Architect that the initial Claim stands.

**§ 15.2.5** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to action at law. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.6** in the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

*(Paragraph Deleted)*

### **§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

# Additions and Deletions Report for AIA® Document A201™ – 2017

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 12:38:16 ET on 11/28/2018.

## PAGE 1

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

## PAGE 2

### EXH-A Project Charter

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### EXH-C.3 Owner Insurance

## PAGE 10

§ 1.1.1.1 Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or Suppliers who provide labor and/or materials for the

...

### §-Work.

...

### § 1.1.2 The Contract

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The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. ~~The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~ Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017.

## PAGE 11

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the ~~indicated-intended~~ results.

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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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In the interest of brevity the Contract Documents frequently omit modifying words such as ~~"all" and "any,"~~ "all" and "any" and articles such as ~~"the" and "an,"~~ "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either ~~statement.~~statement.

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#### § 1.4.2

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In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Owner/Contractor Agreement;
2. All Addenda to the Agreement with those of later date having precedence over those of earlier date;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications;
6. Drawings, with larger scale drawings having precedence over smaller scale drawings.

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In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

...

**§ 1.5.1** 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

## **PAGE 12**

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

...

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~may use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit, Exhibit or other form,~~ to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol ~~Form, Form or other form,~~ shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.2** The Owner shall furnish to the Contractor, within ~~fifteen~~thirty (30) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

#### PAGE 13

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section ~~3.7.1, 3.7.1 and other obligations,~~ the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

...

**§ 2.3.4** ~~The~~If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

...

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

#### PAGE 14

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the

Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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### **§ 3.1.2**

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The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on site. This shall not relieve Contractor from obligations under 3.2.2.1.

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~~§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.~~The Contractor

...

~~§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made Subparagraph 2.2.3 and shall immediately report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover.~~

...

known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.§ 3.2.1.1 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

...

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.3.2.1.2 The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may

## PAGE 15

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Paragraph 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

...

Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor§ 3.2.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Paragraph 3.12.

...

shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.§ 3.2.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Field Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

...

§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

...

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

...



§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

...

§ 3.3.7 The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's

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#### §-operations.

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### **§ 3.4 Labor and Materials**

#### **PAGE 16**

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the contractor.

...

§ 3.4.4 The Contractor shall be responsible for all additional costs incurred to incorporate into the project substitute materials, products, or equipment approved by Owner during the bidding period.

...

§ 3.4.5 The Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available cash discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

...

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state

the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

...

**§ 3.4.6** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such

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#### **§ Substitutions.**

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#### **§ 3.5 Warranty**

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**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

...

**§ 3.5.3** Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its

PAGE 17

#### **§ responsibilities.**

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#### **§ 3.6 Taxes**

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

...

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume appropriate full responsibility for such Work and shall bear the costs attributable to correction, attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation.



...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

## PAGE 18

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work.~~Work including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. All communications given to the superintendent shall be confirmed in writing to the Contractor upon written request of either or both the superintendent and Contractor.

...

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

...

**§ 3.9.4** If requested by the Owner, the Contractor shall preplace the Superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the

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**§-Owner.**

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## **§ 3.10 Contractor's Construction and Submittal Schedules**

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**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the

Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

...

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted by the Owner and Architect.

#### PAGE 19

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and ~~marked currently~~ updated daily to indicate field changes and selections made during construction, and the and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and ~~Owner, Owner as required to complete routine inspections by Architect and Owner prior to any approval of payments to the Contractor,~~ and delivered to the Architect for submittal to the Owner upon completion of the ~~Work as a record Work.~~ The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

...

**§ 3.11.1** No review or receipt of the Work as constructed, such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

...

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved-accepted by the Architect.

#### PAGE 20

**§ 3.12.8** The Work shall be in accordance with approved-accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval-acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval-acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval-acceptance thereof.

...

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval-acceptance of a resubmission shall not apply to such revisions.

...

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor

except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. the Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

...

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

## PAGE 21

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that which~~ would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this paragraph. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this paragraph.

...

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorney's fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within 60 days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys'

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## ARTICLE fees.

...

## ARTICLE 4 ARCHITECT

## PAGE 22

**§ 4.1.3** In the event the employment of the Architect is terminated, the Owner may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

...

**§ 4.1.4** Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to action at law as provided in Paragraph 15.3.

...

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have the Owner's consultant (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

...

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, 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 will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

...

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

...

Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the **§ 4.2.3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

...

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to perform carry out the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the ~~Owner.~~ Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect and the Contractor to comply with Owner requirements in regards to public communications and site signage.

...

**§ 4.2.5** Based on the Architect's ~~evaluations~~ observations and valuations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

...

**§ 4.2.6** The Architect ~~has will have~~ authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the 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, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

## PAGE 23

**§ 4.2.7** The Architect will and the Owner may review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness or~~ Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals ~~by the Architect or the Owner~~ is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's ~~or the Owner's~~ review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's ~~or the Owner's~~ review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's ~~approval or Owner's acceptance of a specific item shall not indicate approval~~ acceptance of an assembly of which the item is a component.

...

**§ 4.2.11** The Architect will interpret and decide matters concerning performance ~~under, and under the requirements of,~~ the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness with reasonable promptness and within any time limits agreed upon.~~ If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

...

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations



and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

PAGE 24

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any subcontractor or use any material to which the Architect or Owner may object as incompetent or unfit, or where there is reason to assume the Work will not be accomplished in accordance with the Contract Documents. Prior to the employment of the named subcontractors, the Contractor must obtain the Owner's approval of such subcontracts for the designated portion of the Work.

...

**§ 5.2.2.1** The right to reject any Subcontractor or Sub-subcontractor will be exercised by the Owner or the Architect when in the reasonable opinion of either of them the proposed Subcontractor or Sub-subcontractor:

1. cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
2. cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of craft;
3. lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor or Sub-subcontractor is proposed;
4. has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
5. cannot satisfactorily perform the part of the Work for which the Subcontractor or Sub-subcontractor is proposed within the time schedule, due to financial status, size of organization, existing workload or other considerations;
6. cannot demonstrate ability, through examples of representative work, to perform the part of the Work for which the Subcontractor or Sub-subcontractor is being considered; or
7. exhibits other factors bearing on the probability of unsatisfactory performance.

...

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time~~ The Contract Sum shall be increased or decreased by the difference, if any, in cost occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum ~~or Contract Time~~ shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

...

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Any proposed substitution or a subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the

Owner and the Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

**PAGE 25**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors ~~will~~ shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

...

**§ 5.3.2** The Contractor, not the Owner, is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the

...

**§ Contractor.**

...

**§ 5.4 Contingent Assignment of Subcontracts**

**PAGE 26**

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. The Contractor shall schedule, coordinate, and cooperate fully with all other contractors. The Contractor shall take all reasonable steps necessary to assure scheduling, coordination, and cooperation among the contractors.

...

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible

for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent; reasonably discoverable.~~

...

§ 6.2.3 ~~The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.~~

...

§ 6.2.5 ~~Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.~~

...

§ 6.2.6 ~~The Owner and each Separate Contractor~~ separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in ~~Section~~ Paragraph 3.14.

...

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and ~~rubbish~~, rubbish as described in Paragraph 3.15, the Owner may clean up and ~~the Architect will allocate the cost among those responsible.~~ responsible as the Architect determines to be just.

...

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. ~~An order for a minor change in the Work may be issued by the Architect alone.~~

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§ 7.1.4 ~~The amount of credit to be allowed by the contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.~~

...

§ 7.1.5 ~~In Paragraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:~~

1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost,
2. For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
4. For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor.



5. Costs to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

...

## **§ 7.2.2** Change Orders shall be prepared on AIA Document G701.

### **PAGE 28**

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others; others~~ (at rates approved by the Owner);

...

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately ~~and shall be recorded as a Change Order.~~

...

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for ~~Payment. Payment up to and not exceeding \$25,000.~~ The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

...

The Architect may order 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. The Architect's order for minor changes shall be in ~~writing~~ writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

### **PAGE 29**

**§ 8.1.4** The term "day" as used in the Contract Documents shall ~~mean calendar day unless otherwise specifically defined~~ shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents..

...

§ 8.2.4 Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

...

§ 8.2.5 Timely final Completion of the Project being of critical importance to the Owner, Contractor agrees that they shall substantially complete all Work under the Contract documents within the time established herein and that they shall finally complete the Work in the detail required and in the time required by the Contract Documents.

...

§ 8.2.6 To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

...

§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

1. Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
2. Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
3. Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
4. Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
5. Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: 1) planning for the next two weeks; 2) work completed for the previous week; 3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

...

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) ~~by delay authorized by the Owner pending mediation and binding dispute resolution;~~ or (5) ~~or (4)~~ by other causes that the Contractor asserts, and the Architect determines, justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect only under the following conditions:

1. Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their subcontractors and suppliers.
2. In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
3. Any unusual delay in deliveries will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
4. With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given for unseasonably favorable weather;
5. Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
6. A delay in the overall Project progress actually occurred and clearly disrupted the total Project programs as a result of one of the valid causes for time extension. An extension of time for parts, phases, or stages may be granted where a valid delay indicated such partial time extension is justified;
7. No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
8. Delays by subcontractors or suppliers will not be considered justification for a time extension, expect for the same valid reasons and conditions enumerated under Subparagraph 8.3.1.

...

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum. This is subject to the right of either party to disagree and assert a claim in accordance with Article

...

## **ARTICLE 15.**

...

## ARTICLE 9 PAYMENTS AND COMPLETION

### PAGE 31

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This The schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment ~~prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, for operations completed in accordance with the Schedule of Values.~~ Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, ~~and shall reflect material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.~~ The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

...

**§ 9.3.1.2** ~~Applications for Payment~~ Such applications shall not include requests for payment for portions of the Work ~~for which of amounts~~ the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason.

...

**§ 9.3.1.2** Following certification of the Application for Payment by the Architect, the Owner shall pay 95% of its value, retaining 5% until Final Completion.

...

or supplier, unless such Work has been performed by others whom the Contractor intends to

pay. **§ 9.3.1.3** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the pervious payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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**§ 9.3.4** In each Application for Payment, the contractor shall certify as follows: "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

...

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### PAGE 33

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

...

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statute 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statute 471.425, Subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

...

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

#### PAGE 34



If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven-thirty (30)~~ days after the date established in the Contract Documents, the amount certified by the Architect ~~awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven-ten (10)~~ additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, ~~plus interest as provided for in the Contract Documents.~~ which shall be accomplished as provided in Article 7.

...

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use ~~use and when the Architect issues a certificate of Substantial Completion.~~

...

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected ~~prior to final payment.~~ The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

...

~~Upon such acceptance, and consent of surety if any,~~ **§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

## PAGE 35

**§ 9.8.6.1** The retainage is for the performance of the Contractor. Nothing in this Agreement connects the retainage to the Subcontractors. Upon satisfactory completion of the Project, and full payment by the Owner to the Contractor for the Work of any Subcontractor, the Subcontractor is to be paid in full. The Owner, at its sole discretion, may continue or make adjustments of the full retainage for the performance of the Contractor.

...

~~shall make payment of retainage applying to the Work or designated portion thereof. Such payment~~ **§ 9.8.6.2** Prior to requesting a reduction of retainage, the Contractor shall obtain in writing an agreement from the Surety agreeing to such a reduction. In reducing retainage, the Contractor shall use the retainage to make full payment to Subcontractors who have completed 100% of their work. The Contractor shall provide to the Owner documentation of payment to Subcontractors and an agreement for retainage deduction from the Surety of the Subcontractor.

...

~~shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~ **§ 9.8.7** The Architect shall make inspection(s) for Substantial Completion and Final Completion in accordance with the AIA Document B101 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

...

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

## PAGE 36

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, ~~effect and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner,~~ (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6) if required by the Owner, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~

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## **§ 9.11** DAMAGES FOR DELAY

...

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule.

...

**§ 9.11.2** If the Contractor is delayed by the Owner, Architect, or any agent or employee of any of the foregoing, the Contractor's sole and exclusive remedy for the delay shall be the right to a time extension for completion of the Contract and not damages. This paragraph does not preclude Contractor's recovery of damage for contractor-caused delays under other provisions of the Contract

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#### ARTICLE Documents.

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### **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

...

#### **§ ~~10.1~~ 10.1.1 Safety Precautions and Programs**

...

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone

...

**§ else.**

...

#### **§ 10.2 Safety of Persons and Property**

#### **PAGE 37**

If either party suffers injury or ~~damaged~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 15.1.4 and 15.1.5.

...

**§ 10.3.1** ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not~~



addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCV) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the

...

~~§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor. By Change Order, the Contract Time-~~

1. Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
2. The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

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~~§ 10.3.2 The Contractor shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)~~

...

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.~~

...

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

...

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

...

§ 10.3.6 Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes Section 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

...

§ 10.3.7 The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

...

§ 10.3.8 The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

...

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

...

## § 10.5 MISCELLANEOUS GENERAL PROVISIONS

...

§ 10.5.1 In occupied facilities from the time the Work is begun until the Contract is completed, the Contractor shall be responsible for coordinating care and control of their contracted responsibilities with the Owner on the

construction premises. The Contractor shall maintain all the Contractor's Work areas on the Project site in first class condition during term of operation under this Contract.

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§ 10.5.2 The Contractor shall give full protection to existing adjacent buildings and occupants. The Contractor shall replace or repair, at the Contractor's own expense, all damage to existing buildings, sidewalks, curbs, drives, fences, planters, signage, monuments, lawns, plants, trees, and shrubbery arising as a result of Work performed under the Contract.

...

§ 10.5.3 Utilities encountered, whether shown on Project Drawings or not, shall be protected and maintained in service until moved or abandoned. The Contractor shall exercise care in the excavation around such utilities as may be shown on the Project Drawings or otherwise found, and which are not to be moved, replaced, or abandoned, and shall restore any damaged items or Work to the same conditions (or better) as existed prior to starting Work. Utilities or other service shown to be abandoned shall be maintained in service until facilities are provided, tested, and ready to use. The Contractor shall take all reasonable precautions in working in the area of excavation to avoid personal injury or property damage resulting from interception or interruption of electrical, telephone, sewer, water, gas, or other services, and shall also cause all Subcontractors, Sub-subcontractors material suppliers, laborers, and other persons on the construction premises to take such precautions. The location and nature of such concealed or buried services is not guaranteed or completely indicated by Owner or Architect.

...

§ 10.5.4 The Contractor shall at all times take reasonable and adequate precautions to protect the Work from damage by the elements, including flooding, rainstorms, windstorms, and any other elements or natural events, etc., and shall not expose the Work of any other contractor to such damages. Where the Contractor, any Subcontractor, or any Sub-subcontractor prepares or erects any material during any season of the year when freezing weather may be anticipated, the Contractor shall employ (and shall cause such Subcontractor or Sub-subcontractor to employ) such methods as may be necessary to render such Work equal in every respect to similar Work done under favorable conditions and the Contractor shall exercise (and shall cause any such Subcontractor or Sub-subcontractor to exercise) reasonable care and diligence to prevent its damage or deterioration. The Contractor shall be responsible for maintaining the building in a dry condition until acceptance. The Contractor shall be responsible for any damage from water, as well as for damage, collapse, or failure of any part of the building caused by excess water undermining or creating pressures on the structures.

...

§ 10.5.5 The Contractor shall not sue any internal combustion machinery that causes noxious, harmful, or toxic fumes inside an enclosed building. When use of internal combustion machinery is unavoidable inside enclosed buildings, the Contractor shall obtain written approval from the Owner prior to use of the machinery and shall provide full ventilation to the outside of the enclosed building for the exhaust of the internal combustion machinery. The Contractor shall locate internal combustion machinery outside an enclosed building so that the exhaust fumes will not enter the building through vent ducts, doors, windows, or other openings in the building.

...

§ 10.5.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by

the Contract Documents, the Owner shall ~~reimburse~~ indemnify the Contractor for all ~~cost and expense thereby incurred~~ reasonable costs and expenses thereby incurred.

...

#### ~~§ 10.4 Emergencies~~ 10.6 EMERGENCIES

...

In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C.3 Owner Insurance, or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

#### PAGE 40

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C.3 Owner Insurance and shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

...

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

...

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

...

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

...

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

...

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

...

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

...

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

...

**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

...

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

## **PAGE 41**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.



...

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

## PAGE 42

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

...

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

...

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

...

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

...

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Architect within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense thereby.

...

**§ 12.2.2.1** ~~In addition to the Contractor's obligations under Section 3.5, if, If,~~ within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it ~~promptly~~promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner and/or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner and/or Architect shall give such notice promptly after discovery of the condition. ~~During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. This period of~~

...

**§ 12.2.2.2** ~~The one year period for correction of Work one year~~ shall be extended with respect to portions of Work first performed after Substantial Completion completion by the period of time between Substantial Completion ~~and the actual completion of that portion of the Work~~ completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner and/or Architect shall give such notice promptly after discovery of the

...

**§ 12.2.2.3** ~~The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.~~

...

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after

deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

...

**§ 12.2.5** ~~The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, construction, whether completed or partially completed, caused by the Contractor's of the Owner or separate contractors caused by the Contractor's~~ correction or removal of Work ~~that which~~ is not in accordance with the requirements of the Contract Documents.

...

**§ 12.2.5 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the ~~Contract Documents. Establishment of the one-year period for correction of Work as described in Section~~ contract documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the ~~Contractor's Contractor's~~ liability with respect to the Contractor's ~~Contractor's~~ obligations other than specifically to correct the Work.

#### PAGE 44

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, ~~and shall bear all related costs of tests, inspections, and approvals.~~ authority. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may ~~be present for observe~~ such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

...

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely a minimum of two (2) working days' notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.~~ observe procedures. The Owner shall bear such costs, except as provided in Subparagraph 13.4.3.

#### PAGE 45

### **§ 13.5 InterestNON-DISCRIMINATION**

...

~~Payments due and unpaid under the Contract Documents shall bear interest~~ **§ 13.5.1** All contracts between the Owner and companies providing goods and services under the Contract Documents (including the Architect and Contractor) shall contain the following equal opportunity and civil right clause:



...

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from the date payment full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

...

Upon request, the provider shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The provider shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

...

The provider acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

...

~~due at~~ This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

...

the rate the parties agree upon **§ 13.5.2** During the completion of the work and all other services required by the Contract Documents, the Architect and Contractor agree that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Architect and Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

...

Architect and Contractor acknowledge that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

...

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

~~in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ **§ 13.6** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent

...

~~**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~24~~ten (10) days after occurrence of the event giving rise to such Claim or within ~~24~~ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

...

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. -Subject to paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for ~~an~~any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

...

#### § 15.1.7 Waiver of Claims for Consequential Damages 15.2 Initial Decision

...

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~ § 15.2.1 Claims, including those alleging an error or omission by the Architect, shall be referred initially to

...

- ~~1~~ damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and the Architect for action. A decision by the Architect, as provided by Subparagraph 15.2.2, shall be required as a condition precedent to action at law or litigation of

...

- ~~2~~ damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. a Claim between the Contractor and Owner as to all such matters arising prior to the

...

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. date final payment is due, regardless if (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to action at law or litigation in the event (1) the position of~~

...

#### § 15.2 Initial Decision

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 15.2.2 within the ten (10) days after the Claim is made, (4) ten (10) days, which decision shall be final subject to action at law as provided in paragraph 15.3. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the

Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim part stating reasons for the rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect shall notify the parties in writing that the Architect's decision will be made within ten (10) days, which decision shall be final subject to action at law as provided in Paragraph 15.3.

...

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

...

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part. If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim, or (3) notify the Architect that the initial Claim stands.

...

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution to action at law. Upon expiration of such time period, the Architect will render to the parties

...

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. the Architect's written decision relative to the

...

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

...

**§ 15.2.7** ~~In 15.2.6~~ in the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a ~~Contractor's~~ Contractor's default, the Owner may, but is not obligated to, notify the surety and request the ~~surety's~~ surety's assistance in resolving the controversy.

...

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

...

**§ 15.3.4** 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.

...

## § 15.4 Arbitration

...

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

...

**§ 15.4.1.1** 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 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.

...

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

...

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

...

## § 15.4.4 Consolidation or Joinder

...

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

...

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

...

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, Minneapolis Public Schools, 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 12:38:16 ET on 11/28/2018 under Order No. 8259021829 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, 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)*





# AIA<sup>®</sup> Document G701<sup>™</sup> – 2017

## Change Order

|                                                                                                                                                                                            |                                                                                                                                                |                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PROJECT:</b> <i>(Name and address)</i><br>Green Central Elementary School Full-Service Community School Renovation (212073)<br>3416 Fourth Avenue South<br>Minneapolis, Minnesota 55408 | <b>CONTRACT INFORMATION:</b><br>Contract For: General Construction<br><br>Date: August 11, 2021                                                | <b>CHANGE ORDER INFORMATION:</b><br>Change Order Number: Three (3)<br><br>Date: January 19, 2023                                            |
| <b>OWNER:</b> <i>(Name and address)</i><br>Minneapolis Public Schools - Special School District #1<br>1250 West Broadway Avenue<br>Minneapolis, Minnesota 55411                            | <b>ARCHITECT:</b> <i>(Name and address)</i><br>Wold Architects and Engineers<br><br>332 Minnesota Street, W2000<br>Saint Paul, Minnesota 55101 | <b>CONTRACTOR:</b> <i>(Name and address)</i><br>Construction Results Corporation<br><br>5465 Highway 169 North<br>Plymouth, Minnesota 55442 |

### THE CONTRACT IS CHANGED AS FOLLOWS:

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

COR 118 - Cost to cut and patch for inspection of lintels. Add \$5,334.55

### TOTAL CHANGE ORDER NO. 3 ADD \$5,334.55

|                                                                          |               |
|--------------------------------------------------------------------------|---------------|
| The original Contract Sum was                                            | \$ 760,220.00 |
| The net change by previously authorized Change Orders                    | \$ 75,471.00  |
| The Contract Sum prior to this Change Order was                          | \$ 835,691.00 |
| The Contract Sum will be increased by this Change Order in the amount of | \$ 5,334.55   |
| The new Contract Sum including this Change Order will be                 | \$ 841,025.55 |
| The Contract Time will be increased by Zero (0) days.                    |               |
| The date of Substantial Completion will be unchanged.                    |               |

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

### NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

|                                                                                     |                                                                                     |                                                         |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|---------------------------------------------------------|
| Wold Architects and Engineers                                                       | Construction Results Corporation                                                    | Minneapolis Public Schools - Special School District #1 |
| <b>ARCHITECT</b> <i>(Firm name)</i>                                                 | <b>CONTRACTOR</b> <i>(Firm name)</i>                                                | <b>OWNER</b> <i>(Firm name)</i>                         |
|  |  |                                                         |
| SIGNATURE                                                                           | SIGNATURE                                                                           | SIGNATURE                                               |
| Aaron Ausing   AIA, Associate                                                       | JEFF SKOOG - V.P.                                                                   |                                                         |
| PRINTED NAME AND TITLE                                                              | PRINTED NAME AND TITLE                                                              | PRINTED NAME AND TITLE                                  |
| January 19, 2023                                                                    | 1/24/23                                                                             |                                                         |
| DATE                                                                                | DATE                                                                                | DATE                                                    |



**CHANGE ORDER REQUEST SUMMARY**

CHANGE ORDER REQUEST #: 118

DATE: 1/16/2023

DESCRIPTION : exploratory and patching for 3rd party testing agent

PROJECT : Green Central Elem. - Reno

C.R.C. PROJECT : #6594

|                                    | Supervision and Project Management |           |  |  | TOTALS                                                                                                                                           | RATE     | COST       |
|------------------------------------|------------------------------------|-----------|--|--|--------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------|
| <b>LABOR (MAN-HOURS) :</b>         |                                    |           |  |  |                                                                                                                                                  |          |            |
| NICK W.                            |                                    | 24.00     |  |  | 24.000                                                                                                                                           | \$125.00 | \$3,000.00 |
| BRIAN Z.                           |                                    | 5.50      |  |  | 5.500                                                                                                                                            | \$125.00 | \$687.50   |
| NATE B.                            |                                    | 5.00      |  |  | 5.000                                                                                                                                            | \$125.00 | \$625.00   |
| PROJECT MANAGER -                  |                                    |           |  |  | 0.000                                                                                                                                            | \$125.00 | \$0.00     |
| <b>MATERIALS &amp; EQUIPMENT :</b> |                                    |           |  |  |                                                                                                                                                  |          |            |
| JOB TRUCK - SMALL TOOLS            |                                    | \$ 125.00 |  |  |                                                                                                                                                  |          | \$125.00   |
| FUEL                               |                                    | \$ 80.00  |  |  |                                                                                                                                                  |          | \$80.00    |
| HAMMER DRILL - SDS                 |                                    | \$ 80.00  |  |  |                                                                                                                                                  |          | \$80.00    |
| GRINDER                            |                                    | \$ 25.00  |  |  |                                                                                                                                                  |          | \$25.00    |
| SAWZALL                            |                                    | \$ 25.00  |  |  |                                                                                                                                                  |          | \$25.00    |
| HEPA VAC                           |                                    | \$ 45.00  |  |  |                                                                                                                                                  |          | \$45.00    |
| HOMEDEPOT                          |                                    | \$ 62.00  |  |  |                                                                                                                                                  |          | \$62.00    |
|                                    |                                    |           |  |  |                                                                                                                                                  |          | \$0.00     |
| <b>SUBCONTRACTORS :</b>            |                                    |           |  |  |                                                                                                                                                  |          |            |
|                                    |                                    |           |  |  |                                                                                                                                                  |          | \$0.00     |
|                                    |                                    |           |  |  |                                                                                                                                                  |          | \$0.00     |
|                                    |                                    |           |  |  |                                                                                                                                                  |          | \$0.00     |
|                                    |                                    |           |  |  |                                                                                                                                                  |          | \$0.00     |
|                                    |                                    |           |  |  |                                                                                                                                                  |          | \$0.00     |
|                                    |                                    |           |  |  |                                                                                                                                                  |          | \$0.00     |
|                                    |                                    |           |  |  | <b>SUBTOTAL = \$4,754.50</b><br>10% OVERHEAD & FEE = \$475.45<br>5% OVERHEAD & FEE = \$0.00<br>BOND COST = \$104.60<br><b>TOTAL = \$5,334.55</b> |          |            |



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3550 124TH AVE. N.W.  
COON RAPIDS, MN 55433 (763)422-1200

2803 00061 27617 12/19/22 12:01 PM  
SALE CASHIER NANCY

|                                      |        |
|--------------------------------------|--------|
| 081099000164 EZ SAND 45 <A>          | 9.28   |
| 18LB-EZ SAND-45MIN COMPOUND          |        |
| 076308910044 3M4PKANGSPG <A>         | 13.41  |
| 3M FINE GRT 4PK ANGLE SANDING SPONGE |        |
| 038662931158 FIBATAPE XS <A>         | 14.54  |
| 2-3/8"X250' XTRA-STRENGTH JOINT TAPE |        |
| 727096305559 RAPID MORTAR <A>        | 17.97  |
| 55LB RAPID SET MORTAR MIX            |        |
| NLP Savings                          | \$3.40 |
| 0000-938-076 8X8X16 BLOCK <A>        |        |
| 8"X8"X16" CONCRETE HW BLOCK          |        |
| 2@1.57                               | 3.14   |

|           |         |
|-----------|---------|
| SUBTOTAL  | 58.34   |
| SALES TAX | 4.16    |
| TOTAL     | \$62.50 |

XXXXXXXXXXXX4270 VISA USD\$ 62.50  
AUTH CODE 219130/4617769 TA  
Chip Read  
AID A00000000031010 VISA CREDIT

P.O.#/JOB NAME: 6594

2803 12/19/22 12:01 PM



2803 61 27617 12/19/2022 4703

|   | RETURN    | POLICY | DEFINITIONS       |
|---|-----------|--------|-------------------|
|   | POLICY ID | DAYS   | POLICY EXPIRES ON |
| A | 1         | 90     | 03/19/2023        |

\*\*\*\*\*

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[www.homedepot.com/survey](http://www.homedepot.com/survey)

User ID: H89 58326 55584  
PASSWORD: 22619 55523

Entries must be completed within 14 days  
of purchase. Entrants must be 18 or  
older to enter. See complete rules on  
website. No purchase necessary.



**Construction Results  
Corporation**

Trusted Commercial & Industrial General Contractor

## TIME & MATERIALS SUMMARY

PROJECT DESCRIPTION : Green Central Lintel work

AUTHORIZED BY : Jeff Skoog

C.R.C. PROJECT : #6594

|                                   | WEEK<br>ENDING<br>12/17/22 | WEEK<br>ENDING<br>12/24/22 | WEEK<br>ENDING | WEEK<br>ENDING | WEEK<br>ENDING | WEEK<br>ENDING | TOTALS   |
|-----------------------------------|----------------------------|----------------------------|----------------|----------------|----------------|----------------|----------|
| <b>LABOR (MAN-HOURS) :</b>        |                            |                            |                |                |                |                |          |
| LABORER                           |                            |                            |                |                |                |                | 0.0      |
| LABORER FMN                       |                            |                            |                |                |                |                | 0.0      |
| CARPENTER                         |                            |                            |                |                |                |                | 0.0      |
| CARPENTER FMN                     |                            |                            |                |                |                |                | 0.0      |
| CEMENT FINISHER                   |                            |                            |                |                |                |                | 0.0      |
| CEMENT FINISHER FMN               |                            |                            |                |                |                |                | 0.0      |
| SUPERINTENDENT (Nate)             | 3.0                        | 2.0                        |                |                |                |                | 5.0      |
| SUPERINTENDENT (Brian Z)          |                            | 5.5                        |                |                |                |                | 5.5      |
| SUPERINTENDENT (Nick W)           |                            | 24.0                       |                |                |                |                | 24.0     |
| PROJECT MANAGER                   | ?                          | ?                          | ?              |                |                |                | 0.0      |
| <b>EQUIPMENT (DAYS) :</b>         |                            |                            |                |                |                |                |          |
| AIR COMPRESSOR & 1 JACKHAMMER     |                            |                            |                |                |                |                | 0.0      |
| ADD'L JACKHAMMER (AIR OR ELECT.)  |                            |                            |                |                |                |                | 0.0      |
| SMALL BACKHOE                     |                            |                            |                |                |                |                | 0.0      |
| BOBCAT (WHEELED) & BUCKET         |                            |                            |                |                |                |                | 0.0      |
| BOBCAT (TRACKED) & BUCKET         |                            |                            |                |                |                |                | 0.0      |
| HYDROHAMMER FOR BOBCAT            |                            |                            |                |                |                |                | 0.0      |
| GAS PARTNER SAW                   |                            |                            |                |                |                |                | 0.0      |
| ELECTRIC PARTNER SAW              |                            |                            |                |                |                |                | 0.0      |
| GENERATOR                         |                            |                            |                |                |                |                | 0.0      |
| JOB TRUCK & SMALL TOOLS           |                            | 5.0                        |                |                |                |                | 5.0      |
| TRAILER FOR JOB TRUCK             |                            |                            |                |                |                |                | 0.0      |
| PLATE COMPACTOR                   |                            |                            |                |                |                |                | 0.0      |
| MORTAR MIXER (ELEC. OR GAS)       |                            |                            |                |                |                |                | 0.0      |
| HAMMERDRILL, SDS                  |                            | 1.0                        |                |                |                |                | 1.0      |
| HAMMERDRILL, SDS MAX              |                            |                            |                |                |                |                | 0.0      |
| ELECTRIC CHIPPING HAMMER          |                            |                            |                |                |                |                | 0.0      |
| CONCRETE VIBRATOR                 |                            |                            |                |                |                |                | 0.0      |
| HOOK TRUCK & BOX OR TRAILER       |                            |                            |                |                |                |                | 0.0      |
| TABLE SAW OR MITER BOX            |                            |                            |                |                |                |                | 0.0      |
| GRINDER                           |                            | 1.0                        |                |                |                |                | 1.0      |
| SAWZALL                           |                            | 1.0                        |                |                |                |                | 1.0      |
| MAG DRILL                         |                            |                            |                |                |                |                | 0.0      |
| LASER LEVEL OR TRANSIT            |                            |                            |                |                |                |                | 0.0      |
| POWER BUGGY                       |                            |                            |                |                |                |                | 0.0      |
| TROWEL MACHINE                    |                            |                            |                |                |                |                | 0.0      |
| SCAFFOLDING & ALUM. PLANK (1 SET) |                            |                            |                |                |                |                | 0.0      |
| CUTTING TORCHES                   |                            |                            |                |                |                |                | 0.0      |
| HEPA VACUUM FOR SILICA DUST       |                            | 1.0                        |                |                |                |                | 1.0      |
| <b>MATERIALS &amp; SUBS :</b>     |                            |                            |                |                |                |                |          |
| Reciept from Nick W               |                            |                            |                |                |                |                | INVOICE  |
|                                   |                            |                            |                |                |                |                | INVOICE  |
|                                   |                            |                            |                |                |                |                | INVOICE  |
|                                   |                            |                            |                |                |                |                | INVOICE  |
|                                   |                            |                            |                |                |                |                | INVOICE  |
| SHOP MAT'LS & SUPPLIES            |                            |                            |                |                |                |                | INVOICE  |
| FUEL FOR EQPT                     |                            |                            |                |                |                |                | LUMP SUM |
| DISPOSAL FEES                     |                            |                            |                |                |                |                | LUMP SUM |
|                                   |                            |                            |                |                |                |                | LUMP SUM |
|                                   |                            |                            |                |                |                |                |          |
|                                   |                            |                            |                |                |                |                |          |
|                                   |                            |                            |                |                |                |                |          |

**AMENDMENT #2 TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND  
Genesis Consulting Partners, LLC**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and **Genesis Consulting Partners, LLC** dated 10/11/2022 ("Contract") is made and entered into by and between Special School District No.1 ("District") and **Genesis Consulting Partners, LLC** ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and **Genesis Consulting Partners, LLC** ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 8/15/2022 through 11/14/2022 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: **SRM: 4400001513**

- 1. Original contract amount: \$178,347.00*
- Amendment #1 Accumulative contract amount: \$356,694.00*
- 2. Amendment #2 Accumulative contract amount: \$681,694.00*

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as

follows: **Section: 1.1 Term of Contract AND 3.1 Total Obligation**

**Description:**

**1.1:** To cover 5.5 additional months of services on the SAP Payroll Best Practice Managed Services which will allow Genesis to continue to process MPS Payroll. Rates and terms are the same, and the amended contract expiration date is now 8/01/2023.

**3.1:** District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$681,694.00 Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

Updated January, 2020

**SPECIAL SCHOOL DISTRICT NO. 1**

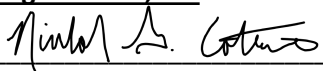
Signature: \_\_\_\_\_

Name: Justin Hennes

Title: Senior Information Officer

Date: 01/26/2023

**Genesis Consulting Partners, LLC:**

Signature: 

Name: Nicholas G. Coticchia

Title: Chief Operating Officer

Date: 01/26/2023

Updated January, 2020

**FIRST AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOL  
DISTRICT NO. 1 AND FERNDALE MARKET LLC**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Ferndale Market LLC, dated July 1, 2022 ("Contract") is made and entered into by and between Special School District No. 1 ("District") and Ferndale Market LLC ("Contractor") (collectively "parties").

WHEREAS, Special School District No. 1, a special a school district created and existing under Minnesota law ("District") and Ferndale Market LLC ("Contractor") entered into a contract titled Contract for Goods – Above \$50,000 for a period between 07/01/2022 through 06/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the contract;

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1 Total Obligation of the Contract shall be amended to read

District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$220,000.00. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the Contract shall apply to and govern the provisions of this Amendment.

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**SPECIAL SCHOOL DISTRICT NO. 1**

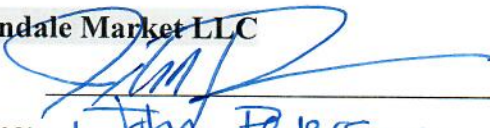
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Ferndale Market LLC**

By:  \_\_\_\_\_

Name: John Peterson

Title: Owner

Date: 1/11/23

**FIRST AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOL  
DISTRICT NO. 1 AND INDROTEC**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Indrotec, dated July 4, 2022 ("Contract") is made and entered into by and between Special School District No. 1 ("District") and Indrotec ("Contractor") (collectively "parties").

WHEREAS, Special School District No. 1, a special a school district created and existing under Minnesota law ("District") and Indrotec ("Contractor") entered into a contract titled Contract for Services \$25,000+ for a period between 02-14-2023 through 06/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the contract;

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1 Total Obligation of the Contract shall be amended to read

District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$1,000,000.00. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the Contract shall apply to and govern the provisions of this Amendment.

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**SPECIAL SCHOOL DISTRICT NO. 1**

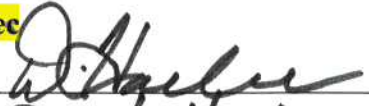
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Indrotec**

By:  \_\_\_\_\_

Name: David Hackler

Title: President

Date: 1/19/2023

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND  
Johnson Litho Graphics**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Johnson Litho Graphics dated 8/1/2022 ("Contract") is made and entered into by and between Special School District No.1 ("District") and Johnson Litho Graphics ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and Johnson Litho Graphics ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 8/1/2022 through 7/31/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001486

1. *Original contract amount:* \$81,500.00
2. *Accumulative contract amount:* \$123,500.00

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

**Section: 2. SCOPE OF WORK AND 3. CONSIDERATION AND TERMS OF PAYMENT**

**Description:** 2.1 Johnson Litho Graphics of Eau Claire, Ltd. will provide printing and mailing of Minneapolis Community Education Spring and Summer 2023 brochures and postcards based on bid proposals JLG Proposal # MPS-MCE #8034-R10 Bid Spring & Summer 2023

3.1 The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as follows. District's total obligation to Contractor under this Contract including compensation for goods, services, and reimbursable expenses , shall not exceed \$123,500.00 Contractor shall not receive any additional reimbursement for material or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

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**SPECIAL SCHOOL DISTRICT NO. 1**

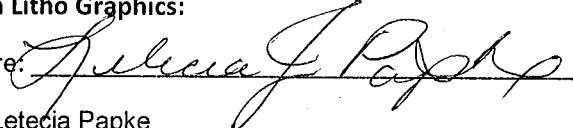
Signature: \_\_\_\_\_

Name: Aviva Hillenbrand

Title: Executive Director of Community Education

Date: \_\_\_\_\_

**Johnson Litho Graphics:**

Signature:  \_\_\_\_\_

Name: Letecia Papke

Title: Corporate Council

Date: 1/24/23 \_\_\_\_\_



MINNEAPOLIS  
PUBLIC SCHOOLS

### *Amendment to Construction Manager as Advisor Agreement*

| <b>PROJECT:</b> <i>(name and address)</i>                          | <b>Agreement Information</b> | <b>Amendment Information</b>                                      |
|--------------------------------------------------------------------|------------------------------|-------------------------------------------------------------------|
| FY21 North High School<br>Additions, renovation and<br>CTE Project | Date: May 31, 2022           | Amendment No.3                                                    |
| <b>ARCHITECT:</b> <i>(name and address)</i>                        |                              | <b>Construction Manager as Advisor:</b> <i>(name and address)</i> |
| LSE Architects                                                     |                              | Kraus Anderson Construction Company                               |
| 100 Portland Avenue S.<br>Suite 100                                |                              | 501 South 8 <sup>th</sup> Street                                  |
| Minneapolis, MN 55401                                              |                              | Minneapolis, MN 55401                                             |

**The Owner and Construction Manager as Advisor amend the Agreement as follows:**

The Construction Manager as Advisor fee is based on an estimated cost of the work for Project No. 1 of \$24,150,000 and based on 14 months of construction. The original contract did not include the General Conditions costs for work that is supplemental to the construction manager fees. Amendment No 2 adds the General Conditions fees to the contract. Phase 2 of the North High School project has been bid and is ready for award to Rochon Construction in a separate contract. This amendment is for the additional services as Construction Manager as Advisor services for the Phase 2 portion of the North High School Renovation and CTE center.

**The Construction Manager as Advisor compensation and schedule shall be adjusted as follows:**

**Compensation Adjustment:**

Original Contract Amount: \$140,000 (MAS-13714)  
Amendment No 1 (8/16/2022, AMD-13797) \$1,273,206  
Amendment No 2 (add General Conditions) \$600,000  
Amendment No 3 (Phase 2 services) \$1,510,764

Total contract value with all amendments \$3,523,970

**Schedule Adjustment:**

Amendment No 3 establishes the new substantial completion date in Section 1.1.4 to September 30, 2024. Should Phase 2 not be completed by September 30, 2024, additional compensation and schedule change will be completed by amendment to the original contract.

**Other Adjustments:**

Contract conditions referencing Project 1, are hereby modified to include Project 2 (Phase 2).  
Administrative Rates for 2022 are amended to Administrative Rates for 2023 in Exhibit B



MINNEAPOLIS  
PUBLIC SCHOOLS

**Signatures:**

|                                                                                                       |                               |
|-------------------------------------------------------------------------------------------------------|-------------------------------|
| <b>Construction Manager as Advisor</b>                                                                | <b>Owner</b>                  |
| <i>Firm Name</i>                                                                                      | <i>Name</i>                   |
| Kraus Anderson Construction Company                                                                   | Minneapolis Public Schools    |
| <br>                                                                                                  | <br>                          |
| <b>Signature</b><br> | <b>Signature</b>              |
| <b>Printed Name and Title</b>                                                                         | <b>Printed Name and Title</b> |
| H. John Huenink VP Director of K-12                                                                   |                               |
| <b>Date</b> 1-5-23                                                                                    | <b>Date</b>                   |

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND  
THE MATH LEARNING CENTER**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and The Math Learning Center dated 7/1/2022 ("Contract") is made and entered into by and between Special School District No.1 ("District") and The Math Learning Center ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and The Math Learning Center ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2022 through 6/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001414

1. *Original contract amount:* \$1,028,960.55
2. *Accumulative contract amount:* \$1,291,292.35

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

**Section:** Section 3.1-Total Obligation and Deliverables

**Description:**

Section 3.1: District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$1,291,292.35. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Deliverables: The Math Learning Center will provide additional Staff Professional Development through 6/30/2023. Reference quotes: Q-10190, Q-09363. Total of these additional quotes: \$263,332.00.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

Updated January, 2020



**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Dr. Aimee Fearing

Title: Senior Academic Officer

Date: \_\_\_\_\_

**Click or tap here to enter text.:**

Signature: Jilloyce Nickerson Digitally signed by Jilloyce Nickerson  
Date: 2023.02.07 14:18:52 -08'00'

Name: Jilloyce Nickerson

Title: CFO

Date: February 7, 2023

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND  
THE MATH LEARNING CENTER**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and The Math Learning Center dated 7/1/2022 ("Contract") is made and entered into by and between Special School District No.1 ("District") and The Math Learning Center ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and The Math Learning Center ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2022 through 6/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001413

1. *Original contract amount:* \$1,149,539.70
2. *Accumulative contract amount:* \$1,388,519.70

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

**Section:** Section 3.1-Total Obligation and Deliverables

**Description:**

Section 3.1: District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$1,291,292.35. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Deliverables: The Math Learning Center will provide additional Staff Professional Development through 6/30/2023. Reference quotes: Q-10189, Q-08436, Q-09364. Total of these additional quotes: \$238,980.00.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

Updated January, 2020

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Dr. Aimee Fearing

Title: Senior Academic Officer

Date: \_\_\_\_\_

**Click or tap here to enter text.:**

Signature: Jilloyce Nickerson Digitally signed by Jilloyce Nickerson  
Date: 2023.02.07 14:18:20 -08'00'

Name: Jilloyce Nickerson

Title: CFO

Date: February 7, 2023

**Special School District No. 1**  
**Official Publication No. 23-2308**  
**FY20 District Wide Security Upgrades -Group 2**

**Contract Sum:** \$ 519,542.03

**Contractor:** Parallel Technologies, Inc.  
 7667 Equitable Drive  
 Eden Prairie, MN 55344

**Project Name and Number:**

Official Publication No. 23-2308  
 FY20 District Wide Security Upgrades -Group 2

**Description:**

To furnish all labor, materials, equipment, and incidentals to complete all work for  
 FY20 District Wide Security Upgrades -Group 2

project, in accordance with Drawings and Specifications prepared by:

True North Consulting Group, 140 Third Street South, Stillwater, MN 55082

Article 9.5 Drawings: November 17, 2022

9.6 Specifications dated: November 17, 2022

9.7 Addenda dated: Addendum #1 dated 12/15/2022

Camera, intrusion detection, and access controls upgrades at Cityview Elementary School, Green Central Dual Language Elementary School, Kenny Elementary School, Windom Elementary School, Ella Baker Elementary School, Lucy Craft Laney Elementary School, Jenny Lind Elementary School, Folwell Elementary School, Sullivan, and Anishinabe Academy.

**Contract Sum Details**

| Item                            | Price         | Status            |
|---------------------------------|---------------|-------------------|
| Base Bid                        | \$ 519,542.03 | Accepted          |
| <b>TOTAL CONTRACT AMOUNT \$</b> |               | <b>519,542.03</b> |

**Contract Documents:**

AIA Document A101-2017

AIA Document A101 Exhibit A-2017

Exhibit B - Project Charter

Exhibit C - Owner Insurance

Exhibit D - Project Schedule

AIA Document A201-201

# AIA® Document A101® – 2017

## **Standard Form of Agreement Between Owner and Contractor** where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the Nineteenth day of January in the year 2023  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

and the Contractor:  
(Name, legal status, address and other information)

Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344

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

FY20 District Wide Security Upgrades-Group 2

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

True North Consulting Group  
140 Third Street South  
Stillwater, MN 55411

The Owner and Contractor 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.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

### EXHIBIT A INSURANCE AND BONDS

#### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

#### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

#### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 The Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

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**User Notes:**

(3B9ADA41)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ X ] By the following date: Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates as defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table Deleted)*

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### **ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

#### **§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Table Deleted)*

**§ 4.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.5** Liquidated damages

Init.

*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

*damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.*

*(Paragraph Deleted)*

*After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

## **ARTICLE 5 PAYMENTS**

### **§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Architect, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

*(Paragraph Deleted)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

Init.



- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

#### **§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Paragraph Deleted)*

5% (five percent)

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:

*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*

determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

*(Paragraph Deleted)*

**§ 5.1.8** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

#### **§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.
- .3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

### **§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

*(Paragraph Deleted)*

### **§ 5.4 Prompt Payment to Subcontractors**

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. 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 party responsible for payment shall pay the actual penalty due to the party requesting payment.

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017.

#### **§ 6.1.1 Mediation**

Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

*If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.*

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

## § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

*(Name, address, email address, and other information)*

Diedra Geye  
1250 West Broadway Avenue  
Minneapolis, MN 55411

§ 8.3 The Contractor's representative:

*(Name, address, email address, and other information)*

Jeffrey Martin  
Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344  
952-920-7185  
jsmartin@ptnet.com

Init.

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

#### § 8.7 Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2020

- .5 Drawings

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

- .6 Specifications

| Section | Title | Date | Pages |
|---------|-------|------|-------|
|---------|-------|------|-------|

- .7 Addenda, if any:

| Number | Date | Pages |
|--------|------|-------|
|--------|------|-------|

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

Init.

(Paragraphs Deleted)

EXH-B Project Charter  
(Paragraph Deleted)

EXH-C Owner Insurance  
EXH-D Project Schedule

(Paragraph Deleted)

(Table Deleted)

[ ] Supplementary and other Conditions of the Contract:

| Document | Title                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Date | Pages |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------|
| .9       | Other documents, if any, listed below:<br><i>(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)</i> |      |       |

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

Karrie Schwartz

Digitally signed by Karrie Schwartz  
DN: cn=Karrie Schwartz, o=Parallel Technologies,  
Inc., ou=COO, email=kschwartz@ptnet.com, c=US  
Date: 2023.01.23 17:45:24 -06'00'

\_\_\_\_\_  
CONTRACTOR (Signature)

Karrie Schwartz, COO  
\_\_\_\_\_  
(Printed name and title)

Init.

# Additions and Deletions Report for AIA® Document A101® – 2017

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 12:12:42 CT on 01/19/2023.

## PAGE 1

**AGREEMENT** made as of the Nineteenth day of January in the year 2023

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344

...

FY20 District Wide Security Upgrades-Group 2

...

True North Consulting Group  
140 Third Street South  
Stillwater, MN 55411

## PAGE 2

[ X ] A date set forth in a notice to proceed issued by the Owner.

...

**§ 3.3.1** ~~Subject to adjustments of the Contract Time as provided in the Contract Documents, the~~ The Contractor shall achieve Substantial Completion of the entire Work:

## PAGE 3

[ X ] By the following date: Defined in EXH-D Project Schedule

...

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following ~~dates~~; dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

...

**Portion of Work**

**Substantial Completion Date**

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract~~. ~~The Contract Sum shall be (\$ )~~; Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** Alternates, if any, included in the Contract ~~Sum~~; Sum are defined in EXH-B Project Charter.

...

**Item**

**Price**

...

**§ 4.2.2** Subject to the conditions noted ~~below~~, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

...

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

...

**Item**

**Price**

**Conditions for Acceptance**

...

**§ 4.3** Allowances, if any, included in the Contract ~~Sum~~; Sum are defined in EXH-B Project Charter.

...

*(Identify each allowance.)*

...

**Item**

**Price**



...

**§ 4.4** Unit prices, if ~~any~~ are defined in EXH-B Project Charter.

...

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

...

**Item**

**Units and Limitations**

**Price per Unit (\$0.00)**

...

**§ 4.5** Liquidated ~~damages~~, if ~~any~~ damages

**PAGE 4**

*(Insert terms and conditions for liquidated damages, if any.) Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

...

damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the

...

Owner.

...

**§ 4.6** Other:

...

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.) After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

...

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month~~, or as follows:

...

month.



...

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Architect ~~not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above,~~ payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

...

*(Federal, state or local laws may require payment within a certain period of time.)*

...

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

## PAGE 5

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

...

5% (five percent)

...

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

...

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.) Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*

...

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include

retainage as follows: determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

...

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site-site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

## PAGE 6

.3 all lien waivers and IC134 forms have been delivered to the Owner.

...

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30-45 days after the issuance of the Architect's final Certificate for Payment, or as follows:

...

Payment.

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

...

*(Insert rate)*

...

## **§ 5.4 Prompt Payment to Subcontractors**

...

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of interest agreed upon, if any, one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. 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 party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless A201–2017.

...

#### **§ 6.1.1 Mediation**

...

the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

...

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

...

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.) If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.*

...

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

**PAGE 7**

**[ X ]** Litigation in a court of competent jurisdiction

...

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

...

Diedra Geye  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Jeffrey Martin  
Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344  
952-920-7185  
jsmartin@ptnet.com

## PAGE 8

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2020

## PAGE 9

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

...

☐ — AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:

...

[EXH-B Project Charter](#)

...

*(Insert the date of the E204-2017 incorporated into this Agreement.)*

...

[EXH-C Owner Insurance](#)

...

[EXH-D Project Schedule](#)

...

[ - ] The Sustainability Plan:

...

**Title**

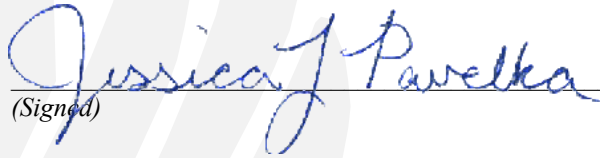
**Date**

**Pages**

## **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 12:12:42 CT on 01/19/2023 under Order No. 2114296869 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

Manager, Capital Planning & Construction  
(Title)

01/19/2023  
(Dated)



# AIA® Document A101® – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the **Nineteenth** day of **January** in the year **2023**  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

FY20 District Wide Security Upgrades-Group 2

**THE OWNER:**  
(Name, legal status and address)

Minneapolis Public Schools | Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**THE CONTRACTOR:**  
(Name, legal status and address)

Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344

### TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

#### 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.

This document is intended to be used in conjunction with AIA Document A201®-2017, General Conditions of the Contract for Construction. Article 11 of A201®-2017 contains additional insurance provisions.

### § A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|----------------|-----------|
|----------------|-----------|

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|----------|-----------|
|----------|-----------|

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

### § A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.



#### § A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

#### § A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

Init.

/

[ ] § A.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] § A.2.5.2 **Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

**Coverage**

**Limits**

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:  
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined is ECH-C Owner Insurance, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and

.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance .

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance .

*(Paragraph deleted)*

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance .

*(Paragraphs deleted)*

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

### **§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1 as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

| Type             | Penal Sum (\$0.00)  |
|------------------|---------------------|
| Payment Bond     | Full contract value |
| Performance Bond | Full contract value |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None

# Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

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 12:15:41 CT on 01/19/2023.

## PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Nineteenth day of January in the year 2023

...

FY20 District Wide Security Upgrades-Group 2

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344

## PAGE 4

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, as defined in ECH-C Owner Insurance,~~ providing coverage for claims including

## PAGE 5

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~(\$ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage as defined in EXH-C Owner Insurance .~~

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

§ A.3.2.5 Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability with ~~policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance .

~~§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~

~~§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate as defined in EXH-C Owner Insurance .~~

~~§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate as defined in EXH-C Owner Insurance.~~

PAGE 6

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1:

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)* A.3.3.1 as defined in EXH-C Owner Insurance.

☐ **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:  
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

☐ **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.

☐ **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage,



transportation, and disposal of asbestos-containing materials.

☐ ~~§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.~~

☐ ~~§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.~~

☐ ~~§ A.3.3.2.6 Other Insurance  
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)~~

**Coverage**

**Limits**

**§ A.3.4 Performance Bond and Payment Bond**

...

Payment Bond

Full contract value

Performance Bond

Full contract value

...

None

## Exhibit B - Project Charter

### Project Name and Number:

FY20 District Wide Security Upgrades -Group 2  
Official Publication No. 23-2308

### Contractor:

Parallel Technologies, Inc.  
7667 Equitable Drive  
Eden Prairie, MN 55344

### Description:

To furnish all labor, materials, equipment, and incidentals to complete all work for  
FY20 District Wide Security Upgrades -Group 2  
project, in accordance with Drawings and Specifications prepared by:  
True North Consulting Group, 140 Third Street South, Stillwater, MN 55082

Article 9.5 Drawings: November 17, 2022  
9.6 Specifications dated: November 17, 2022  
9.7 Addenda dated: Addendum #1 dated 12/15/2022

### Contract Sum:

The total contract sum shall be:

**\$ 519,542.03**

### Alternates: N/A

### Conditions:

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
| None | \$ -  |                           |
|      |       |                           |

### Allowances:

| Item | Price | Status |
|------|-------|--------|
| None | \$ -  |        |
|      | \$ -  |        |

### Unit Prices:

| Item                | Price per Unit | Units & Limitations |
|---------------------|----------------|---------------------|
| 1) Programmer Labor | \$ 107.09      | per hour            |
| 2) Technician Labor | \$ 107.09      | per hour            |



## Exhibit C - Owner's Insurance

### Project Name and Number:

Special School District No. 1  
Official Publication No. 23-2308  
FY20 District Wide Security Upgrades -Group 2

**Contractor:** Parallel Technologies, Inc.  
7667 Equitable Drive  
Eden Prairie, MN 55344

### Insurance Requirements for Contractors

#### 1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017

The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

##### a. Commercial General Liability

|                                             |              |
|---------------------------------------------|--------------|
| i. General Aggregate                        | \$ 1,500,000 |
| ii. Products/Completed Operations Aggregate | \$ 1,500,000 |
| iii. Per Occurrence                         | \$ 1,500,000 |

The Owner shall be named as additional insured for Commercial General Liability Insurance.

##### b. Automobile Insurance

|                            |              |
|----------------------------|--------------|
| i. Per Occurrence          | \$ 1,000,000 |
| ii. PIP                    | Basic        |
| iii. Underinsured Motorist | \$ 1,000,000 |
| iv. Uninsured Motorist     | \$ 1,000,000 |

##### c. Workers Compensation

|                              |                         |
|------------------------------|-------------------------|
| i. Coverage A is statutory.  |                         |
| ii. Coverage B               | \$500,000 Each Accident |
| iii. \$500,000 Each Employee |                         |

##### d. Professional Liability (if the Contractor is hiring professionals)

|              |              |
|--------------|--------------|
| i. Per Claim | \$ 2,000,000 |
|--------------|--------------|

For Projects with an estimated construction cost of over \$10,000,000 or major structural work, additional Aggregate coverage of \$4,000,000 is required.

## Exhibit C Owner's Insurance

### e. Manned or Unmanned Aircraft Coverage (if used)

|               |              |
|---------------|--------------|
| i. Per Claim  | \$ 1,000,000 |
| ii. Aggregate | \$ 1,000,000 |

### f. Property Insurance

|               |              |
|---------------|--------------|
| i. Per Claim  | \$ 1,000,000 |
| ii. Aggregate | \$ 1,000,000 |

This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

### g. Builders "all risk" Insurance

|               |              |
|---------------|--------------|
| i. Per Claim  | \$ 2,000,000 |
| ii. Aggregate | \$ 4,000,000 |

This insurance is only required for additions exceeding \$10,000,000. Renovations to existing schools are not required to have builders "all risk" insurance.

### h. Umbrella Liability

|                    |              |
|--------------------|--------------|
| i. Aggregate limit | \$ 5,000,000 |
|--------------------|--------------|

This insurance is required only for projects larger than \$10,000,000 in total construction costs.

## Exhibit D - Project Schedule

### Project Name and Number:

Special School District No. 1  
Official Publication No. 23-2308  
FY20 District Wide Security Upgrades -Group 2

### Contractor:

Parallel Technologies, Inc.  
7667 Equitable Drive  
Eden Prairie, MN 55344

### Description:

Camera, intrusion detection, and access controls upgrades at Cityview Elementary School, Green Central Dual Language Elementary School, Kenny Elementary School, Windom Elementary School, Ella Baker Elementary School, Lucy Craft Laney Elementary School, Jenny Lind Elementary School, Folwell Elementary School, Sullivan, and Anishinabe Academy.

### Schedule:

| Description                   | Date                      |
|-------------------------------|---------------------------|
| Construction Commences        | March 15, 2023            |
| <b>Substantial Completion</b> | <b>September 29, 2023</b> |
| Final Completion              | October 30, 2023          |
| 1-year Warranty Inspection    | September 2023            |

# **AIA**® Document A201™ – 2017

## **General Conditions of the Contract for Construction**

for the following PROJECT:  
(Name and location or address)

**THE OWNER:**  
(Name, legal status and address)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**THE ARCHITECT:**  
(Name, legal status and address)

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- 2 OWNER**
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- 13 MISCELLANEOUS PROVISIONS**
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT**
- 15 CLAIMS AND DISPUTES**

### **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.

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or Suppliers who provide labor and/or materials for the Work.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017.



## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.4.2

In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Owner/Contractor Agreement;
2. All Addenda to the Agreement with those of later date having precedence over those of earlier date;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications;
6. Drawings, with larger scale drawings having precedence over smaller scale drawings.

In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

## § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

#### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

#### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### **ARTICLE 2 OWNER**

#### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within thirty (30) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

#### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract

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Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1 and other obligations, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a



Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

### **§ 3.1.2**

The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on site. This shall not relieve Contractor from obligations under 3.2.2.1.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

#### **§ 3.2.1 The Contractor**

shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.3 and shall immediately report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may

discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's

warranty under Paragraph 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

**§ 3.2.2** The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Paragraph 3.12.

**§ 3.2.3** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Field Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

**§ 3.3.5** The Contractor shall at all times make reasonable provisions to protect any work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent

and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the contractor.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the project substitute materials, products, or equipment approved by Owner during the bidding period.

**§ 3.4.5** The Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available cash discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.6** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such  
**Substitutions.**

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its

responsibilities.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;



- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. All communications given to the superintendent shall be confirmed in writing to the Contractor upon written request of either or both the superintendent and Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall preplace the Superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted by the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner as required to complete routine inspections by Architect and Owner prior to any approval of payments to the Contractor, and delivered to the Architect for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.1** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

### § 3.12 Shop Drawings, Product Data and Samples

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been accepted by the Architect.

**§ 3.12.8** The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued

authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this paragraph. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this paragraph.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorney's fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within 60 days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.



**§ 4.1.3** In the event the employment of the Architect is terminated, the Owner may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 4.1.4** Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to action at law as provided in Paragraph 15.3.

## **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's consultant (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

**§ 4.2.3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons performing portions of the Work.

## **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect and the Contractor to comply with Owner requirements in regards to public communications and site signage.

**§ 4.2.5** Based on the Architect's observations and valuations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the 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, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will and the Owner may review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals by the Architect or the Owner is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's or the Owner's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's or the Owner's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's or Owner's acceptance of a specific item shall not indicate acceptance of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract

Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any subcontractor or use any material to which the Architect or Owner may object as incompetent or unfit, or where there is reason to assume the Work will not be accomplished in accordance with the Contract Documents. Prior to the employment of the named subcontractors, the Contractor must obtain the Owner's approval of such subcontracts for the designated portion of the Work.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.2.1** The right to reject any Subcontractor or Sub-subcontractor will be exercised by the Owner or the Architect when in the reasonable opinion of either of them the proposed Subcontractor or Sub-subcontractor:

1. cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
2. cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of craft;
3. lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor or Sub-subcontractor is proposed;
4. has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
5. cannot satisfactorily perform the part of the Work for which the Subcontractor or Sub-subcontractor is proposed within the time schedule, due to financial status, size of organization, existing workload or other considerations;
6. cannot demonstrate ability, through examples of representative work, to perform the part of the Work for which the Subcontractor or Sub-subcontractor is being considered; or
7. exhibits other factors bearing on the probability of unsatisfactory performance.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference, in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Any proposed substitution or a subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner and the Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

## **§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the

Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor, not the Owner, is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

#### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. The Contractor shall schedule, coordinate, and cooperate fully with all other contractors. The



Contractor shall take all reasonable steps necessary to assure scheduling, coordination, and cooperation among the contractors.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

## **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not reasonably discoverable.

**§ 6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

## **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** The amount of credit to be allowed by the contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after

consultation with the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Paragraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost,
2. For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
4. For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor.
5. Costs to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

## **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Orders shall be prepared on AIA Document G701.

## **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding \$25,000. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order 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. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

## § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents..

§ 8.2.4 Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

§ 8.2.5 Timely final Completion of the Project being of critical importance to the Owner, Contractor agrees that they shall substantially complete all Work under the Contract documents within the time established herein and that they shall finally complete the Work in the detail required and in the time required by the Contract Documents.

§ 8.2.6 To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

1. Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
2. Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
3. Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
4. Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
5. Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: 1) planning for the next two weeks; 2) work completed for the previous week; 3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor

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disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts, and the Architect determines, justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect only under the following conditions:

1. Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their subcontractors and suppliers.
2. In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
3. Any unusual delay in deliveries will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
4. With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given for unseasonably favorable weather;
5. Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
6. A delay in the overall Project progress actually occurred and clearly disrupted the total Project programs as a result of one of the valid causes for time extension. An extension of time for parts, phases, or stages may be granted where a valid delay indicated such partial time extension is justified;
7. No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
8. Delays by subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Subparagraph 8.3.1.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum. This is subject to the right of either party to disagree and assert a claim in accordance with Article 15.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

## **§ 9.2 Schedule of Values**

Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. The schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

## **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason.

**§ 9.3.1.2** Following certification of the Application for Payment by the Architect, the Owner shall pay 95% of its value, retaining 5% until Final Completion.

**§ 9.3.1.3** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

**§ 9.3.4** In each Application for Payment, the contractor shall certify as follows: "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statute 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statute 471.425, Subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If



approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### **§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon ten (10) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be accomplished as provided in Article 7.

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and when the Architect issues a certificate of Substantial Completion.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list.

Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.6.1** The retainage is for the performance of the Contractor. Nothing in this Agreement connects the retainage to the Subcontractors. Upon satisfactory completion of the Project, and full payment by the Owner to the Contractor for the Work of any Subcontractor, the Subcontractor is to be paid in full. The Owner, at its sole discretion, may continue or make adjustments of the full retainage for the performance of the Contractor.

**§ 9.8.6.2** Prior to requesting a reduction of retainage, the Contractor shall obtain in writing an agreement from the Surety agreeing to such a reduction. In reducing retainage, the Contractor shall use the retainage to make full payment to Subcontractors who have completed 100% of their work. The Contractor shall provide to the Owner documentation of payment to Subcontractors and an agreement for retainage deduction from the Surety of the Subcontractor.

**§ 9.8.7** The Architect shall make inspection(s) for Substantial Completion and Final Completion in accordance with the AIA Document B101 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties,

such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **§ 9.11 DAMAGES FOR DELAY**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to



- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### **§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 15.1.4 and 15.1.5.

#### **§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCV) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

1. Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
2. The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or

contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.

**§ 10.3.4** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes Section 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

**§ 10.4** The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

## **§ 10.5 MISCELLANEOUS GENERAL PROVISIONS**

**§ 10.5.1** In occupied facilities from the time the Work is begun until the Contract is completed, the Contractor shall be responsible for coordinating care and control of their contracted responsibilities with the Owner on the construction premises. The Contractor shall maintain all the Contractor's Work areas on the Project site in first class condition during term of operation under this Contract.

**§ 10.5.2** The Contractor shall give full protection to existing adjacent buildings and occupants. The Contractor shall replace or repair, at the Contractor's own expense, all damage to existing buildings, sidewalks, curbs, drives, fences, planters, signage, monuments, lawns, plants, trees, and shrubbery arising as a result of Work performed under the Contract.

**§ 10.5.3** Utilities encountered, whether shown on Project Drawings or not, shall be protected and maintained in service until moved or abandoned. The Contractor shall exercise care in the excavation around such utilities as may be shown on the Project Drawings or otherwise found, and which are not to be moved, replaced, or abandoned, and shall restore any damaged items or Work to the same conditions (or better) as existed prior to starting Work. Utilities or other service shown to be abandoned shall be maintained in service until facilities are provided, tested, and ready to use. The Contractor shall take all reasonable precautions in working in the area of excavation to avoid personal injury or property damage resulting from interception or interruption of electrical, telephone, sewer, water, gas, or other services, and shall also cause all Subcontractors, Sub-subcontractors material suppliers, laborers, and other persons on the construction premises to take such precautions. The location and nature of such concealed or buried services is not guaranteed or completely indicated by Owner or Architect.

**§ 10.5.4** The Contractor shall at all times take reasonable and adequate precautions to protect the Work from damage by the elements, including flooding, rainstorms, windstorms, and any other elements or natural events, etc., and shall not expose the Work of any other contractor to such damages. Where the Contractor, any Subcontractor, or any Sub-subcontractor prepares or erects any material during any season of the year when freezing weather may be anticipated, the Contractor shall employ (and shall cause such Subcontractor or Sub-subcontractor to employ) such methods as may be necessary to render such Work equal in every respect to similar Work done under favorable conditions and the Contractor shall exercise (and shall cause any such Subcontractor or Sub-subcontractor to exercise) reasonable care and diligence to prevent its damage or deterioration. The Contractor shall be responsible for maintaining the building in a dry condition until acceptance. The Contractor shall be responsible for any damage from water, as well as for damage, collapse, or failure of any part of the building caused by excess water undermining or creating pressures on the structures.

**§ 10.5.5** The Contractor shall not use any internal combustion machinery that causes noxious, harmful, or toxic fumes inside an enclosed building. When use of internal combustion machinery is unavoidable inside enclosed buildings, the Contractor shall obtain written approval from the Owner prior to use of the machinery and shall provide full ventilation to the outside of the enclosed building for the exhaust of the internal combustion machinery. The Contractor shall locate internal combustion machinery outside an enclosed building so that the exhaust fumes will not enter the building through vent ducts, doors, windows, or other openings in the building.

**§ 10.5.6** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all reasonable costs and expenses thereby incurred.

## **§ 10.6 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C.3 Owner Insurance, or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C.3 Owner Insurance and shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from

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an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Paragraph Deleted)*

## **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Architect within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## **§ 12.2 Correction of Work**

### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby.

### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** If, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner and/or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner and/or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner and/or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation from the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the contract documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.



### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give a minimum of two (2) working days' notice to the Architect of when and where tests and inspections are to be made so that the Architect may observe procedures. The Owner shall bear such costs, except as provided in Subparagraph 13.4.3.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## § 13.5 NON-DISCRIMINATION

§ 13.5.1 All contracts between the Owner and companies providing goods and services under the Contract Documents (including the Architect and Contractor) shall contain the following equal opportunity and civil right clause:

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the provider shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The provider shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The provider acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.5.2 During the completion of the work and all other services required by the Contract Documents, the Architect and Contractor agree that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Architect and Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Architect and Contractor acknowledge that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.6 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the

representations of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

*(Paragraph Deleted)*

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

##### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

##### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the



condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action. A decision by the Architect, as provided by Subparagraph 15.2.2, shall be required as a condition precedent to action at law or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless if (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to action at law or litigation in the event (1) the position of  
*(Paragraph Deleted)*

Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 15.2.2 within the ten (10) days after the Claim is made, (4) ten (10) days, which decision shall be final subject to action at law as provided in paragraph 15.3. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part stating reasons for the rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or

requested by the Architect, the Architect shall notify the parties in writing that the Architect's decision will be made within ten (10) days, which decision shall be final subject to action at law as provided in Paragraph 15.3.

**§ 15.2.3** If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

**§ 15.2.4** If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim, or (3) notify the Architect that the initial Claim stands.

**§ 15.2.5** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to action at law. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.6** in the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

*(Paragraph Deleted)*

### **§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

# Additions and Deletions Report for AIA® Document A201™ – 2017

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 12:38:16 ET on 11/28/2018.

## PAGE 1

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

## PAGE 2

### EXH-A Project Charter

...

### EXH-C.3 Owner Insurance

## PAGE 10

§ 1.1.1.1 Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or Suppliers who provide labor and/or materials for the

...

### §-Work.

...

### § 1.1.2 The Contract

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The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith. Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017.

## PAGE 11

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent



consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the ~~indicated-intended~~ results.

...

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

...

In the interest of brevity the Contract Documents frequently omit modifying words such as ~~"all" and "any,"~~ "all" and "any" and articles such as ~~"the" and "an,"~~ "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either ~~statement.~~statement.

...

#### § 1.4.2

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In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Owner/Contractor Agreement;
2. All Addenda to the Agreement with those of later date having precedence over those of earlier date;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications;
6. Drawings, with larger scale drawings having precedence over smaller scale drawings.

...

In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

...

**§ 1.5.1** 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

## **PAGE 12**

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

...

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~may use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit, Exhibit or other form,~~ to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol ~~Form, Form or other form,~~ shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.2** The Owner shall furnish to the Contractor, within ~~fifteen~~thirty (30) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

#### PAGE 13

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section ~~3.7.1, 3.7.1 and other obligations,~~ the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

...

**§ 2.3.4** ~~The~~If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

...

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

#### PAGE 14

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the

Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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### **§ 3.1.2**

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The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on site. This shall not relieve Contractor from obligations under 3.2.2.1.

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~~§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.~~The Contractor

...

~~§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made Subparagraph 2.2.3 and shall immediately report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover.~~

...

known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.§ 3.2.1.1 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

...

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.3.2.1.2 The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may

## PAGE 15

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Paragraph 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

...

Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor§ 3.2.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Paragraph 3.12.

...

shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.§ 3.2.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Field Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

...

§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

...

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

...

§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

...

§ 3.3.7 The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's

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#### §-operations.

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### **§ 3.4 Labor and Materials**

#### **PAGE 16**

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the contractor.

...

§ 3.4.4 The Contractor shall be responsible for all additional costs incurred to incorporate into the project substitute materials, products, or equipment approved by Owner during the bidding period.

...

§ 3.4.5 The Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available cash discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

...

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state

the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

...

**§ 3.4.6** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such

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#### **§ Substitutions.**

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#### **§ 3.5 Warranty**

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**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

...

**§ 3.5.3** Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its

PAGE 17

#### **§ responsibilities.**

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#### **§ 3.6 Taxes**

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

...

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume appropriate full responsibility for such Work and shall bear the costs attributable to correction. attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation.



...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

## PAGE 18

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work.~~Work including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. All communications given to the superintendent shall be confirmed in writing to the Contractor upon written request of either or both the superintendent and Contractor.

...

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

...

**§ 3.9.4** If requested by the Owner, the Contractor shall preplace the Superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the

...

**§-Owner.**

## **§ 3.10 Contractor's Construction and Submittal Schedules**

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**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the



Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

...

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted by the Owner and Architect.

## PAGE 19

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently updated daily to indicate field changes and selections made during construction, and the and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and ~~Owner~~, Owner as required to complete routine inspections by Architect and Owner prior to any approval of payments to the Contractor, and delivered to the Architect for submittal to the Owner upon completion of the ~~Work as a record Work.~~ The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

...

**§ 3.11.1** ~~No review or receipt of the Work as constructed, such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.~~

...

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved-accepted by the Architect.

## PAGE 20

**§ 3.12.8** The Work shall be in accordance with approved-accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval-acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval-acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval-acceptance thereof.

...

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval-acceptance of a resubmission shall not apply to such revisions.

...

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor

except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. the Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

...

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

## PAGE 21

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that which~~ would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this paragraph. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this paragraph.

...

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorney's fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within 60 days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys'

...

## ARTICLE fees.

...

## ARTICLE 4 ARCHITECT

## PAGE 22

**§ 4.1.3** In the event the employment of the Architect is terminated, the Owner may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

...

**§ 4.1.4** Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to action at law as provided in Paragraph 15.3.

...

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have the Owner's consultant (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

...

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, 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 will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

...

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

...

Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the **§ 4.2.3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

...

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to perform carry out the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the ~~Owner.~~ Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect and the Contractor to comply with Owner requirements in regards to public communications and site signage.

...

**§ 4.2.5** Based on the Architect's ~~evaluations~~ observations and valuations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

...

**§ 4.2.6** The Architect ~~has will have~~ authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the 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, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

## PAGE 23

**§ 4.2.7** The Architect will and the Owner may review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness or~~ Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals ~~by the Architect or the Owner~~ is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's ~~or the Owner's~~ review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's ~~or the Owner's~~ review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's ~~approval or Owner's acceptance of a specific item shall not indicate approval~~ acceptance of an assembly of which the item is a component.

...

**§ 4.2.11** The Architect will interpret and decide matters concerning performance ~~under, and under the requirements of,~~ the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness with reasonable promptness and within any time limits agreed upon.~~ If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

...

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

PAGE 24

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any subcontractor or use any material to which the Architect or Owner may object as incompetent or unfit, or where there is reason to assume the Work will not be accomplished in accordance with the Contract Documents. Prior to the employment of the named subcontractors, the Contractor must obtain the Owner's approval of such subcontracts for the designated portion of the Work.

...

**§ 5.2.2.1** The right to reject any Subcontractor or Sub-subcontractor will be exercised by the Owner or the Architect when in the reasonable opinion of either of them the proposed Subcontractor or Sub-subcontractor:

1. cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
2. cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of craft;
3. lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor or Sub-subcontractor is proposed;
4. has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
5. cannot satisfactorily perform the part of the Work for which the Subcontractor or Sub-subcontractor is proposed within the time schedule, due to financial status, size of organization, existing workload or other considerations;
6. cannot demonstrate ability, through examples of representative work, to perform the part of the Work for which the Subcontractor or Sub-subcontractor is being considered; or
7. exhibits other factors bearing on the probability of unsatisfactory performance.

...

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time~~ The Contract Sum shall be increased or decreased by the difference, if any, in cost occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum ~~or Contract Time~~ shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

...

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Any proposed substitution or a subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the



Owner and the Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

**PAGE 25**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors ~~will~~ shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

...

**§ 5.3.2** The Contractor, not the Owner, is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the

...

**§ Contractor.**

...

**§ 5.4 Contingent Assignment of Subcontracts**

**PAGE 26**

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. The Contractor shall schedule, coordinate, and cooperate fully with all other contractors. The Contractor shall take all reasonable steps necessary to assure scheduling, coordination, and cooperation among the contractors.

...

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible

for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent; reasonably discoverable.~~

...

§ 6.2.3 ~~The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.~~

...

§ 6.2.5 ~~Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.~~

...

§ 6.2.6 ~~The Owner and each Separate Contractor~~ separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in ~~Section-Paragraph~~ 3.14.

...

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and ~~rubbish~~, rubbish as described in Paragraph 3.15, the Owner may clean up and ~~the Architect will allocate the cost among those responsible.~~ responsible as the Architect determines to be just.

...

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. ~~An order for a minor change in the Work may be issued by the Architect alone.~~

## PAGE 27

§ 7.1.4 ~~The amount of credit to be allowed by the contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.~~

...

§ 7.1.5 ~~In Paragraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:~~

1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost,
2. For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
4. For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor.



5. Costs to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

...

## **§ 7.2.2** Change Orders shall be prepared on AIA Document G701.

### **PAGE 28**

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others; others~~ (at rates approved by the Owner);

...

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately ~~and shall be recorded as a Change Order.~~

...

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for ~~Payment.~~ Payment up to and not exceeding \$25,000. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

...

The Architect may order 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. The Architect's order for minor changes shall be in ~~writing~~ writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

### **PAGE 29**

**§ 8.1.4** The term "day" as used in the Contract Documents shall ~~mean calendar day unless otherwise specifically defined~~ shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents..

...

§ 8.2.4 Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

...

§ 8.2.5 Timely final Completion of the Project being of critical importance to the Owner, Contractor agrees that they shall substantially complete all Work under the Contract documents within the time established herein and that they shall finally complete the Work in the detail required and in the time required by the Contract Documents.

...

§ 8.2.6 To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

...

§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

1. Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
2. Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
3. Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
4. Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
5. Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: 1) planning for the next two weeks; 2) work completed for the previous week; 3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

...

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) ~~by delay authorized by the Owner pending mediation and binding dispute resolution;~~ or (5) ~~or (4)~~ by other causes that the Contractor asserts, and the Architect determines, justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect only under the following conditions:

1. Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their subcontractors and suppliers.
2. In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
3. Any unusual delay in deliveries will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
4. With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given for unseasonably favorable weather;
5. Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
6. A delay in the overall Project progress actually occurred and clearly disrupted the total Project programs as a result of one of the valid causes for time extension. An extension of time for parts, phases, or stages may be granted where a valid delay indicated such partial time extension is justified;
7. No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
8. Delays by subcontractors or suppliers will not be considered justification for a time extension, expect for the same valid reasons and conditions enumerated under Subparagraph 8.3.1.

...

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum. This is subject to the right of either party to disagree and assert a claim in accordance with Article

...

## ARTICLE 15.

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## ARTICLE 9 PAYMENTS AND COMPLETION

### PAGE 31

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This The schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment ~~prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, for operations completed in accordance with the Schedule of Values.~~ Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, ~~and shall reflect material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.~~ The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

...

**§ 9.3.1.2** ~~Applications for Payment~~ Such applications shall not include requests for payment for portions of the Work ~~for which of amounts~~ the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason.

...

**§ 9.3.1.2** Following certification of the Application for Payment by the Architect, the Owner shall pay 95% of its value, retaining 5% until Final Completion.

...

or supplier, unless such Work has been performed by others whom the Contractor intends to

pay. **§ 9.3.1.3** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the pervious payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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**§ 9.3.4** In each Application for Payment, the contractor shall certify as follows: "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

...

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### PAGE 33

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

...

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statute 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statute 471.425, Subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

...

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

#### PAGE 34



If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven-thirty~~ (30) days after the date established in the Contract Documents, the amount certified by the Architect ~~awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven-ten~~ (10) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, ~~plus interest as provided for in the Contract Documents.~~ which shall be accomplished as provided in Article 7.

...

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use ~~use and when the Architect issues a certificate of Substantial Completion.~~

...

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected ~~prior to final payment.~~ The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

...

~~Upon such acceptance, and consent of surety if any,~~ **§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

## PAGE 35

**§ 9.8.6.1** The retainage is for the performance of the Contractor. Nothing in this Agreement connects the retainage to the Subcontractors. Upon satisfactory completion of the Project, and full payment by the Owner to the Contractor for the Work of any Subcontractor, the Subcontractor is to be paid in full. The Owner, at its sole discretion, may continue or make adjustments of the full retainage for the performance of the Contractor.

...

~~shall make payment of retainage applying to the Work or designated portion thereof. Such payment~~ **§ 9.8.6.2** Prior to requesting a reduction of retainage, the Contractor shall obtain in writing an agreement from the Surety agreeing to such a reduction. In reducing retainage, the Contractor shall use the retainage to make full payment to Subcontractors who have completed 100% of their work. The Contractor shall provide to the Owner documentation of payment to Subcontractors and an agreement for retainage deduction from the Surety of the Subcontractor.

...

~~shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~ **§ 9.8.7** The Architect shall make inspection(s) for Substantial Completion and Final Completion in accordance with the AIA Document B101 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

...

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

## PAGE 36

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, ~~effect and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner,~~ (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6) if required by the Owner, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~

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## **§ 9.11** DAMAGES FOR DELAY



...

§ 9.11.1 The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule.

...

§ 9.11.2 If the Contractor is delayed by the Owner, Architect, or any agent or employee of any of the foregoing, the Contractor's sole and exclusive remedy for the delay shall be the right to a time extension for completion of the Contract and not damages. This paragraph does not preclude Contractor's recovery of damage for contractor-caused delays under other provisions of the Contract

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#### ARTICLE Documents.

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### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

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#### § 10.1.1 Safety Precautions and Programs

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§ 10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone

...

#### § else.

...

### § 10.2 Safety of Persons and Property

#### PAGE 37

If either party suffers injury or ~~damaged~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 15.1.4 and 15.1.5.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not

addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCV) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the

...

~~§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor. By Change Order, the Contract Time~~

1. Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
2. The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

## PAGE 38

~~§ 10.3.2 The Contractor shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)~~

...

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.~~

...

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

...

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

...

§ 10.3.6 Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes Section 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

...

§ 10.3.7 The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

...

§ 10.3.8 The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

...

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

...

## § 10.5 MISCELLANEOUS GENERAL PROVISIONS

...

§ 10.5.1 In occupied facilities from the time the Work is begun until the Contract is completed, the Contractor shall be responsible for coordinating care and control of their contracted responsibilities with the Owner on the

construction premises. The Contractor shall maintain all the Contractor's Work areas on the Project site in first class condition during term of operation under this Contract.

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§ 10.5.2 The Contractor shall give full protection to existing adjacent buildings and occupants. The Contractor shall replace or repair, at the Contractor's own expense, all damage to existing buildings, sidewalks, curbs, drives, fences, planters, signage, monuments, lawns, plants, trees, and shrubbery arising as a result of Work performed under the Contract.

...

§ 10.5.3 Utilities encountered, whether shown on Project Drawings or not, shall be protected and maintained in service until moved or abandoned. The Contractor shall exercise care in the excavation around such utilities as may be shown on the Project Drawings or otherwise found, and which are not to be moved, replaced, or abandoned, and shall restore any damaged items or Work to the same conditions (or better) as existed prior to starting Work. Utilities or other service shown to be abandoned shall be maintained in service until facilities are provided, tested, and ready to use. The Contractor shall take all reasonable precautions in working in the area of excavation to avoid personal injury or property damage resulting from interception or interruption of electrical, telephone, sewer, water, gas, or other services, and shall also cause all Subcontractors, Sub-subcontractors material suppliers, laborers, and other persons on the construction premises to take such precautions. The location and nature of such concealed or buried services is not guaranteed or completely indicated by Owner or Architect.

...

§ 10.5.4 The Contractor shall at all times take reasonable and adequate precautions to protect the Work from damage by the elements, including flooding, rainstorms, windstorms, and any other elements or natural events, etc., and shall not expose the Work of any other contractor to such damages. Where the Contractor, any Subcontractor, or any Sub-subcontractor prepares or erects any material during any season of the year when freezing weather may be anticipated, the Contractor shall employ (and shall cause such Subcontractor or Sub-subcontractor to employ) such methods as may be necessary to render such Work equal in every respect to similar Work done under favorable conditions and the Contractor shall exercise (and shall cause any such Subcontractor or Sub-subcontractor to exercise) reasonable care and diligence to prevent its damage or deterioration. The Contractor shall be responsible for maintaining the building in a dry condition until acceptance. The Contractor shall be responsible for any damage from water, as well as for damage, collapse, or failure of any part of the building caused by excess water undermining or creating pressures on the structures.

...

§ 10.5.5 The Contractor shall not sue any internal combustion machinery that causes noxious, harmful, or toxic fumes inside an enclosed building. When use of internal combustion machinery is unavoidable inside enclosed buildings, the Contractor shall obtain written approval from the Owner prior to use of the machinery and shall provide full ventilation to the outside of the enclosed building for the exhaust of the internal combustion machinery. The Contractor shall locate internal combustion machinery outside an enclosed building so that the exhaust fumes will not enter the building through vent ducts, doors, windows, or other openings in the building.

...

§ 10.5.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by

the Contract Documents, the Owner shall ~~reimburse~~ indemnify the Contractor for all ~~cost and expense thereby incurred~~ reasonable costs and expenses thereby incurred.

...

#### ~~§ 10.4 Emergencies~~ 10.6 EMERGENCIES

...

In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C.3 Owner Insurance, or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

#### PAGE 40

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C.3 Owner Insurance and shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

...

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

...

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

...

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

...

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

...

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

...

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

...

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

...

**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

...

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

## **PAGE 41**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.



...

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

## PAGE 42

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

...

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

...

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

...

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

...

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Architect within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.



The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense thereby.

...

**§ 12.2.2.1** ~~In addition to the Contractor's obligations under Section 3.5, if, If,~~ within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it ~~promptly~~promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner and/or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner and/or Architect shall give such notice promptly after discovery of the condition. ~~During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. This period of~~

...

**§ 12.2.2.2** ~~The one year period for correction of Work one year~~ shall be extended with respect to portions of Work first performed after Substantial Completion completion by the period of time between Substantial Completion ~~and the actual completion of that portion of the Work~~ completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner and/or Architect shall give such notice promptly after discovery of the

...

**§ 12.2.2.3** ~~The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.~~

...

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after

deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

...

**§ 12.2.5** ~~The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, construction, whether completed or partially completed, caused by the Contractor's of the Owner or separate contractors caused by the Contractor's~~ correction or removal of Work ~~that which~~ is not in accordance with the requirements of the Contract Documents.

...

**§ 12.2.5 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the ~~Contract Documents. Establishment of the one-year period for correction of Work as described in Section~~ contract documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the ~~Contractor's Contractor's~~ liability with respect to the Contractor's Contractor's obligations other than specifically to correct the Work.

#### PAGE 44

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, ~~and shall bear all related costs of tests, inspections, and approvals.~~ authority. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may ~~be present for observe~~ such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

...

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely a minimum of two (2) working days' notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.~~ observe procedures. The Owner shall bear such costs, except as provided in Subparagraph 13.4.3.

#### PAGE 45

### **§ 13.5 InterestNON-DISCRIMINATION**

...

~~Payments due and unpaid under the Contract Documents shall bear interest~~ **§ 13.5.1** All contracts between the Owner and companies providing goods and services under the Contract Documents (including the Architect and Contractor) shall contain the following equal opportunity and civil right clause:

...

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from the date payment full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

...

Upon request, the provider shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The provider shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

...

The provider acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

...

~~due at~~ This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

...

~~the rate the parties agree upon~~ § 13.5.2 During the completion of the work and all other services required by the Contract Documents, the Architect and Contractor agree that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Architect and Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

...

Architect and Contractor acknowledge that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

...

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

~~in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ **§ 13.6** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent

...

~~**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~24~~ten (10) days after occurrence of the event giving rise to such Claim or within ~~24~~ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

...

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. -Subject to paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for ~~an~~any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

...

#### § 15.1.7 Waiver of Claims for Consequential Damages 15.2 Initial Decision

...

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~ § 15.2.1 Claims, including those alleging an error or omission by the Architect, shall be referred initially to

...

- ~~1~~ damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and the Architect for action. A decision by the Architect, as provided by Subparagraph 15.2.2, shall be required as a condition precedent to action at law or litigation of

...

- ~~2~~ damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. a Claim between the Contractor and Owner as to all such matters arising prior to the

...

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. date final payment is due, regardless if (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to action at law or litigation in the event (1) the position of~~

...

#### § 15.2 Initial Decision

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 15.2.2 within the ten (10) days after the Claim is made, (4) ten (10) days, which decision shall be final subject to action at law as provided in paragraph 15.3. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the



Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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**§ 15.2.2** ~~The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~ part stating reasons for the rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect shall notify the parties in writing that the Architect's decision will be made within ten (10) days, which decision shall be final subject to action at law as provided in Paragraph 15.3.

...

**§ 15.2.3** ~~In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~ If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

...

**§ 15.2.4** ~~If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~ a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim, or (3) notify the Architect that the initial Claim stands.

...

**§ 15.2.5** ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial~~ If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution to action at law. Upon expiration of such time period, the Architect will render to the parties

...

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~ the Architect's written decision relative to the

...

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

...

**§ 15.2.7** ~~In 15.2.6~~ in the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a ~~Contractor's~~ Contractor's default, the Owner may, but is not obligated to, notify the surety and request the ~~surety's~~ surety's assistance in resolving the controversy.

...

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

...

**§ 15.3.4** 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.



...

## § 15.4 Arbitration

...

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

...

**§ 15.4.1.1** 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 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.

...

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

...

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

...

## § 15.4.4 Consolidation or Joinder

...

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

...

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

...

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, Minneapolis Public Schools, 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 12:38:16 ET on 11/28/2018 under Order No. 8259021829 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, 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)*

## FY21 North High School Renovation and CTE Center Phase 2 Project

**Contract Sum: \$23,600,000**

**Contractor: Rochon Corporation**

### Project Name and Number

North High School Renovation and CTE Center Phase 2  
1500 James Avenue North  
Minneapolis, MN 55411  
Minneapolis Public Schools Project Number 21NORTCTE  
OP 23-2314

### Description

The Phase 2 project is the new entrance and commons area. The infill of the plaza area. New sanitary sewer line. New parking and landscaping on the North portion of the building.

### Contract Sum details

| Item     | Price           | Status   |
|----------|-----------------|----------|
| Base Bid | \$23,600,000.00 | accepted |

### Contract Documents

AIA Document A132-2019  
AIA Document A132 Exhibit A-2019  
Exhibit B – Project Charter  
Exhibit C – Project Schedule  
Exhibit D – Project Schedule  
AIA Document E203-2013 Building Information Modeling and Digital Data Exhibit  
AIA Document A232-2019 General Conditions

# AIA<sup>®</sup> Document A132<sup>™</sup> – 2019

## ***Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition***

**AGREEMENT** made as of the 17th day of January in the year two thousand and twenty-three  
(In words, indicate day, month, and year.)

**BETWEEN** the Owner:  
(Name, legal status, address, and other information)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

and the Contractor:  
(Name, legal status, address, and other information)

Rochon Corporation  
28 2<sup>nd</sup> Street, NW #200  
Osseo, MN 55369  
Attn Paul Braton

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

North High School Renovations and CTE Center Phase 2  
1500 James Avenue North  
Minneapolis, MN 55411

The Construction Manager:  
(Name, legal status, address, and other information)

Kraus-Anderson Construction Company  
501 South Eighth Street  
Minneapolis, MN 55404

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

LSE Architects  
100 Portland Avenue S. #100  
Minneapolis, MN 55401

The Owner and Contractor 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.

This document is intended to be used in conjunction with AIA Documents A232<sup>™</sup>–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132<sup>™</sup>–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132<sup>™</sup>–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232<sup>™</sup>–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

|   |                                                          |
|---|----------------------------------------------------------|
| 1 | THE CONTRACT DOCUMENTS                                   |
| 2 | THE WORK OF THIS CONTRACT                                |
| 3 | DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION |
| 4 | CONTRACT SUM                                             |
| 5 | PAYMENTS                                                 |
| 6 | DISPUTE RESOLUTION                                       |
| 7 | TERMINATION OR SUSPENSION                                |
| 8 | MISCELLANEOUS PROVISIONS                                 |
| 9 | ENUMERATION OF CONTRACT DOCUMENTS                        |

### EXHIBIT A INSURANCE AND BONDS

### EXHIBIT B DETERMINATION OF THE COST OF THE WORK

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

Init.

/

- [ **X** ] A date set forth in a notice to proceed issued by the Owner.
- [ ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

### § 3.3 Substantial Completion of the Project or Portions Thereof

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:  
(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)

Defined in EXH-D Project Schedule

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

(Table deleted)

(Table deleted)

(Paragraphs deleted)

§ 3.4.3 If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

## ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the  
(Paragraphs deleted)

Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

### § 4.2 Stipulated Sum

§ 4.2.1 The Contract Sum shall be twenty-three million, six hundred thousand dollars (\$ 23,600,000 ), subject to additions and deductions as provided in the Contract Documents.

### § 4.2.2 Alternates

§ 4.2.2.1 Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.

(Table deleted)

§ 4.2.2.2 Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Paragraphs deleted)

(Table deleted)

§ 4.2.3 Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

(Identify each allowance.)

Item

Price

§ 4.2.4 Unit prices, if any are defined in EXH-B Project Charter.

(Table deleted)

Init.



§ 4.3 Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

§ 4.4 Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

§ 4.5 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars (\$1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars (\$1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

§ 4.6 Other:

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").  
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of

Init.

values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and
- .5 Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

#### **§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the

retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:

*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

## **§ 5.2 Final Payment**

### **§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**

**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and
- .3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

### **§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**

**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.  
*(Insert rate of interest agreed upon, if any.)*

Zero %

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document

*(Paragraphs deleted)*

A232–2019.

Init.

### § 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

## § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- ☐ Arbitration pursuant to Article 15 of AIA Document A232–2019.
- ☒ Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.
- ☐ Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

### § 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.1.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

*(Name, address, email address, and other information)*

**Curt Hartog, Executive Director**

Minneapolis Public Schools, SSD#1  
Capital Planning, Construction & Maintenance  
1250 West Broadway Avenue, Minneapolis, MN 55411

§ 8.3 The Contractor's representative:

Init.



(Name, address, email address, and other information)

Paul Braton  
Executive Vice President  
Rochon Corporation  
28 2<sup>nd</sup> Street NW #200  
Osseo, MN 55369  
763-559-9393

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. 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 Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq.* Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner’s representative identified in Section 8.2

### § 8.7 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor’s Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

### § 8.8 Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner’s written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- .2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit
- .3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

### .5 Drawings

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

|     |                                                          |                  |
|-----|----------------------------------------------------------|------------------|
| 139 | North High School Renovations & CTE Center Volume 1 of 2 | October 28, 2022 |
|-----|----------------------------------------------------------|------------------|

|     |                                                          |                  |
|-----|----------------------------------------------------------|------------------|
| 161 | North High School Renovations & CTE Center Volume 2 of 2 | October 28, 2022 |
|-----|----------------------------------------------------------|------------------|

### .6 Specifications

| Section | Title | Date | Pages |
|---------|-------|------|-------|
|---------|-------|------|-------|

|                    |                                                            |                  |      |
|--------------------|------------------------------------------------------------|------------------|------|
| All Specifications | North High School Renovations and CTE Center Bid Package 2 | October 28, 2022 | 1488 |
|--------------------|------------------------------------------------------------|------------------|------|

.7 Addenda, if any:

| Number | Date       | Pages |
|--------|------------|-------|
| 1      | 11/18/2022 | 81    |
| 2      | 12/1/2022  | 253   |
| 3      | 12/6/2022  | 30    |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

EXH-B Project Charter  
EXH-C Owner Insurance  
EXH-D Project Schedule

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[ ]

(Paragraphs deleted)

X ] Supplementary and other Conditions of the Contract:

Document

Date

Pages

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232-2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Bid Package submitted by Rochon Corporation on December 9, 2022

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

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

PAUL BRADON - EXECUTIVE VICE PRESIDENT  
(Printed name and title)

Init.



# **Additions and Deletions Report for**

## **AIA<sup>®</sup> Document A132™ – 2019**

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 08:26:12 CT on 01/03/2023.

### **PAGE 1**

**AGREEMENT** made as of the 17th day of January in the year two thousand and twenty-three

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Rochon Corporation  
28 2<sup>nd</sup> Street, NW #200  
Osseo, MN 55369  
Attn Paul Braton

...

North High School Renovations and CTE Center Phase 2  
1500 James Avenue North  
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company  
501 South Eighth Street  
Minneapolis, MN 55404

...

LSE Architects  
100 Portland Avenue S. #100  
Minneapolis, MN 55401

### **PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

☒ A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~ dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

**Portion of Work**

**Substantial Completion Date**

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~

~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~

~~(Check one of the following boxes and complete the necessary information.)~~

~~☐ Not later than ( ) calendar days from the date of commencement of the Work.~~

~~☐ By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

**Portion of Work**

**Date to be substantially complete**

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. ~~The Contract Sum shall be one of the following:~~

~~(Check the appropriate box.)~~

☐ Stipulated Sum, in accordance with Section 4.2 below

~~[ ] — Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

~~[ ] — Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*

Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

§ 4.2.1 The Contract Sum shall be **twenty-three million, six hundred thousand dollars** (\$ **23,600,000** ), subject to additions and deductions as provided in the Contract Documents.

...

§ 4.2.2.1 Alternates, if any, included in the Contract Sum:  
Sum are defined in EXH-B Project Charter.

**Item**

**Price**

§ 4.2.2.2 Subject to the conditions noted below, ~~the following in EXH-B Project Charter,~~ alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

**Item**

**Price**

**Conditions for Acceptance**

§ 4.2.3 Allowances, if any, included in the Contract Sum: Sum are defined in EXH-B Project Charter.

...

§ 4.2.4 Unit prices, if any:

*(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)* any are defined in EXH-B Project Charter.

**Item**

**Units and Limitations**

**Price per Unit (\$0.00)**

§ 4.3 ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~ Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

~~§ 4.3.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.3.2 The Contractor's Fee:~~

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 4.3.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

**§ 4.3.5** Rental rates for Contractor-owned equipment shall not exceed —percent (—%) of the standard rental rate paid at the place of the Project.

**§ 4.3.6** Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item                                                                                                                                                                                                                                                                                                             | Units and Limitations | Price per Unit (\$0.00) |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| <b>§ 4.3.7</b> The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work. |                       |                         |

**§ 4.4** Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum PriceUnit prices, if any, are defined in EXH-B Project Charter.

**§ 4.4.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

**§ 4.4.2** The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

**§ 4.4.3** The method of adjustment of the Contractor's Fee for changes in the Work:

**§ 4.4.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

**§ 4.4.5** Rental rates for Contractor-owned equipment shall not exceed —percent (—%) of the standard rental rate paid at the place of the Project.

**§ 4.4.6** Unit Prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item                                                                                                                                                                                                                                                                                                                                                                                                                 | Units and Limitations | Price per Unit (\$0.00) |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| <b>§ 4.4.7 Guaranteed Maximum Price</b>                                                                                                                                                                                                                                                                                                                                                                              |                       |                         |
| <b>§ 4.4.7.1</b> The Contract Sum is guaranteed by the Contractor not to exceed—(\$—), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. |                       |                         |

**§ 4.4.7.2 Alternates**

**§ 4.4.7.2.1** Alternates, if any, included in the Guaranteed Maximum Price:

| Item                                                                                                                                                                                                                                                                                                                                               | Price |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| <b>§ 4.4.7.2.2</b> Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.<br><i>(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)</i> |       |

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
|------|-------|---------------------------|

**§ 4.4.7.3** Allowances, if any, included in the Guaranteed Maximum Price:

*(Identify each allowance.)*

Item

Price

§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption.)

§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.

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Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars (\$1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars (\$1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect~~, Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:  
month.

§ 5.1.3 ~~Provided that When an Application for Payment is received by the Construction Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").~~

...



§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**PAGE 5**

§ 5.1.4.3 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

**~~§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price~~**

~~§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ 5.1.5.3 In accordance with AIA Document A232-2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~§ 5.1.5.3.1 The amount of each progress payment shall first include:~~

- ~~.1 The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~.2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~.3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~§ 5.1.5.3.2 The amount of each progress payment shall then be reduced by:~~

- ~~.1 The aggregate of any amounts previously paid by the Owner;~~
- ~~.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;~~
- ~~.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019;~~
- ~~.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Retainage withheld pursuant to Section 5.1.7.~~

**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232-2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:



- .1 — That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 — That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 — That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 — The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

- .1 — The aggregate of any amounts previously paid by the Owner;
- .2 — The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;
- .3 — Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 — For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019;
- .5 — The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 — Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

#### **PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; the Architect; and
- .3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than 30-forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232-2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

A232-2019.

#### **§ 6.1.1 Mediation**

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

PAGE 7

[ ] — Litigation in a court of competent jurisdiction. **X** [ ] — Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

**~~§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price~~**

**~~§ 7.2.1 Termination~~**

**~~§ 7.2.1.1~~** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232-2019.

**~~§ 7.2.1.2 Termination by the Owner for Cause~~**

**~~§ 7.2.1.2.1~~** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the Owner shall then only pay the Contractor an amount as follows:

- ~~.1 — Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~.2 — Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 — Subtract the aggregate of previous payments made by the Owner; and~~
- ~~.4 — Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232-2019.~~

**~~§ 7.2.1.2.2~~** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.

**~~§ 7.2.1.2.3~~** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.

**~~§ 7.2.1.3 Termination by the Owner for Convenience~~**

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232-2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)~~

### **§ 7.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.

...

**Curt Hartog, Executive Director**

Minneapolis Public Schools, SSD#1  
Capital Planning, Construction & Maintenance  
1250 West Broadway Avenue, Minneapolis, MN 55411

**PAGE 8**

**Paul Braton**

**Executive Vice President**

**Rochon Corporation**

**28 2<sup>nd</sup> Street NW #200**

**Osseo, MN 55369**

**763-559-9393**

...

### **§ 8.5 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

### **§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

### **§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

### **§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. 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 Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

## **§ 8.9 Prevailing Wage**

Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq.* Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A132™ 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. EXH-C Owner Insurance.  
**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

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North High School  
Renovations & CTE  
Center Volume 1 of 2

October 28, 2022

161

North High School  
Renovations & CTE  
Center Volume 2 of 2

October 28, 2022

...

All Specifications

North High School  
Renovations and CTE  
Center Bid Package 2

October 28,  
2022

1488

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2  
3

11/18/2022  
12/1/2022  
12/6/2022

81  
253  
30

...

EXH-B Project Charter  
EXH-C Owner Insurance  
EXH-D Project Schedule

[ ] AIA Document A132™ 2019, Exhibit B, Determination of the Cost of the Work

[ ] AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:  
(Insert the date of the E235-2019 incorporated into this Agreement.)



☐ ~~—~~ The Sustainability Plan:

| Title | Date | Pages |
|-------|------|-------|
|-------|------|-------|

☒ Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

...

Bid Package submitted by Rochon Corporation on December 9, 2022

## ***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 08:26:12 CT on 01/03/2023 under Order No. 2114296869 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



*(Signed)*

Executive Director

*(Title)*

1/3/2023

*(Dated)*





# AIA<sup>®</sup> Document A132<sup>™</sup> – 2019 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 17th day of January in the year two thousand and twenty-three  
(In words, indicate day, month, and year.)

for the following **PROJECT**:  
(Name and location or address)

North High School Renovation and CTE Center Phase 2  
1500 James Avenue North, Minneapolis, MN 55411

**THE OWNER:**  
(Name, legal status, and address)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**THE CONTRACTOR:**  
(Name, legal status, and address)

Rochon Corporation  
28 2<sup>nd</sup> Street NW #200, Osseo, MN 55369

### TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232<sup>™</sup>–2019, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

#### 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.

This document is intended to be used in conjunction with AIA Document A232<sup>™</sup>–2019, General Conditions of the Contract for Construction. Article 11 of A232<sup>™</sup>–2019 contains additional insurance provisions

### § A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

#### Causes of Loss

#### Sub-Limit

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

#### Coverage

#### Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

### § A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

### § A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

Init.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

#### **§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

- ☐ **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.

Init.

/

(Indicate applicable limits of coverage or other conditions in the fill point below.)

[ ] **§ A.2.5.2 Other Insurance**

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

**Coverage**

**Limits**

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.



§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

§ A.3.2.5 Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

§ A.3.2.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

§ A.3.2.8 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

| Type             | Penal Sum (\$0.00) |
|------------------|--------------------|
| Payment Bond     | total cost of work |
| Performance Bond | Total cost of work |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Payment and Performance bonds shall be increased or decreased for change orders that impact the total project compensation amount

# **Additions and Deletions Report for**

## **AIA® Document A132™ – 2019 Exhibit A**

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 10:00:01 CT on 12/30/2022.

### **PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 17th day of January in the year two thousand and twenty-three

...

North High School Renovation and CTE Center Phase 2  
1500 James Avenue North, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Rochon Corportation  
28 2<sup>nd</sup> Street NW #200, Osseo, MN 55369

### **PAGE 2**

§ **A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

### **PAGE 4**

§ **A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...



**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~—(\$ —) each occurrence, —(\$ —) general aggregate, and —(\$ —) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~—(\$ —) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage,~~ as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits,~~ limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability with policy limits not less than ~~—(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit,~~ Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.~~

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate.~~ Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

...

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1, as defined in EXH-C Owner Insurance.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- ☐ **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:  
(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)
- ☐ **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than \$( ) per claim and \$( ) in the aggregate, for Work within fifty (50) feet of railroad property.
- ☐ **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than \$( ) per claim and \$( ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- ☐ **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all risks" completed value form.
- ☐ **§ A.3.3.2.5** Property insurance on an "all risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.
- ☐ **§ A.3.3.2.6 Other Insurance**  
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

## § A.3.4 Performance Bond and Payment Bond

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Payment Bond

total cost of work

Performance Bond

Total cost of work

...

Payment and Performance bonds shall be increased or decreased for change orders that impact the total project compensation amount

## Exhibit B – Project Charter

### Project Name and Number

North High School Renovation and CTE Center Phase 2  
1500 James Avenue North  
Minneapolis, MN 55411  
Minneapolis Public Schools Project Number 21NORTCTE  
OP 23-2314

### Description

The Phase 2 project is the new entrance and commons area. The infill of the plaza area. New sanitary sewer line. New parking and landscaping on the North portion of the building.

### Contract Sum

The contract sum is \$23,600,000.00.

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:

The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

- a. Worker's Compensation and Employer's Liability Insurance

- i. Coverage A is statutory.
- ii. Coverage B
  - \$500,000 Each Accident
  - \$500,000 Each Employee
  - \$500,000 Policy Limit (Disease)

- b. Comprehensive General Liability Insurance \*

|                                         |             |
|-----------------------------------------|-------------|
| General Aggregate                       | \$1,000,000 |
| Products/Completed Operations Aggregate | \$1,000,000 |
| Per Occurrence                          | \$1,000,000 |
| Medical Payments                        | \$10,000    |

\* The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

- c. Automobile Insurance

|                       |             |
|-----------------------|-------------|
| Per Occurrence        | \$1,000,000 |
| PIP                   | Basic       |
| Underinsured Motorist | \$1,000,000 |
| Uninsured Motorist    | \$1,000,000 |

- d. Professional Liability Insurance

- i. Per Claim
- |  |             |
|--|-------------|
|  | \$2,000,000 |
|--|-------------|

- ii. For projects with an estimated construction Contract Sum of over \$10,000,000 or major structural work an aggregate is required as follows:
 

|           |             |
|-----------|-------------|
| Aggregate | \$4,000,000 |
|-----------|-------------|
- e. Umbrella Liability Insurance
  - i. Per Occurrence \$2,000,000
  - ii. For projects with an estimated construction Contract Sum of over \$10,000,000 or major structural work an aggregate is required as follows:
 

|           |             |
|-----------|-------------|
| Aggregate | \$2,000,000 |
|-----------|-------------|
- f. Manned or Unmanned Aircraft Coverage (if used)
  - i. Per Claim \$1,000,000
  - ii. Aggregate \$1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are \$1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

## 2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in addition to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

### 3. PROFESSIONAL LIABILITY INSURANCE

- a. Professional Liability Coverage of \$2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below \$2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."
- b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.
- c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

### 4. COVERAGE

The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

### 5. GENERALLY

- a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

- b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

### 1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017

The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

#### a. Commercial General Liability

|                                             |             |
|---------------------------------------------|-------------|
| i. General Aggregate                        | \$1,500,000 |
| ii. Products/Completed Operations Aggregate | \$1,500,000 |
| iii. Per Occurrence                         | \$1,500,000 |

The Owner shall be named as additional insured for Commercial General Liability Insurance

#### b. Automobile Insurance

|                            |             |
|----------------------------|-------------|
| i. Per Occurrence          | \$1,000,000 |
| ii. PIP                    | Basic       |
| iii. Underinsured Motorist | \$1,000,000 |
| iv. Uninsured Motorist     | \$1,000,000 |

#### c. Workers Compensation

- i. Coverage A is statutory.
- ii. Coverage B \$500,000 Each Accident
- iii. \$500,000 Each Employee



d. Professional Liability (if the Contractor is hiring professionals)

- i. Per Claim \$2,000,000

For Projects with an estimated construction cost of over \$10,000,000 or major structural work, additional Aggregate coverage of \$4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

- i. Per Claim \$1,000,000
- ii. Aggregate \$1,000,000

f. Property Insurance

- i. Per Claim \$1,000,000
- ii. Aggregate \$1,000,000

This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders "all risk" Insurance

- i. Per Claim \$2,000,000
- ii. Aggregate \$4,000,000

This insurance is only required for additions exceeding \$10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

- i. Aggregate limit \$5,000,000

This insurance is required only for projects larger than \$10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## Project Name and Number

North High School Renovation and CTE Center Phase 2  
1500 James Avenue North  
Minneapolis, MN 55411  
Minneapolis Public Schools Project Number 21NORTCTE  
OP 23-2314

## Description

The Phase 2 project is the new entrance and commons area. The infill of the plaza area. New sanitary sewer line. New parking and landscaping on the North portion of the building.

## Schedule

The following schedule for construction is provide below

|                                |                    |
|--------------------------------|--------------------|
| Construction start:            | April 2023         |
| Substantial Completion Phase 2 | August 31, 2024    |
| Final Completion Phase 2       | September 30, 2024 |



# AIA<sup>®</sup> Document E203<sup>™</sup> – 2013

## ***Building Information Modeling and Digital Data Exhibit***

This Exhibit dated the 17th day of January in the year two thousand and twenty-three is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

*(Name and location or address of the Project)*

North High School Renovation and CTE Center Phase 2  
1500 James Avenue North, Minneapolis, MN 55411

### **TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS**
- 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**
- 3 DIGITAL DATA PROTOCOLS**
- 4 BUILDING INFORMATION MODELING PROTOCOLS**
- 5 OTHER TERMS AND CONDITIONS**

### **ARTICLE 1 GENERAL PROVISIONS**

§ 1.1 This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project.

§ 1.2.1 The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

### **§ 1.3 Adjustments to the Agreement**

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

### **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.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201<sup>™</sup>–2013, Project Digital Data Protocol Form, and G202<sup>™</sup>–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

§ 1.3.2 Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

§ 1.3.3 Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

## § 1.4 Definitions

§ 1.4.1 **Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

§ 1.4.2 **Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

§ 1.4.3 **Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

§ 1.4.4 **Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

§ 1.4.5 **Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

§ 1.4.6 **Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

§ 1.4.7 **Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

§ 1.4.8 **Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

§ 1.4.9 **Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

§ 1.4.10 **Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

§ 1.4.11 **Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

§ 1.4.12 **Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

## ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital

Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

### ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| Anticipated Digital Data                 | Applicability to the Project<br><i>(Indicate Applicable or Not Applicable)</i> | Location of Detailed Description<br><i>(Section 3.1.1 below or in an attachment to this exhibit and identified below)</i> |
|------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Project Agreements and Modifications     | Applicable                                                                     | MPS Central Files                                                                                                         |
| Project communications                   | Applicable                                                                     | MPS Central Files                                                                                                         |
| Architect's pre-construction submittals  | Applicable                                                                     | MPS Central Files                                                                                                         |
| Contract Documents                       | Applicable                                                                     | MPS Central Files                                                                                                         |
| Contractor's submittals                  | Applicable                                                                     | Contractor/Architect                                                                                                      |
| Subcontractor's submittals               | Applicable                                                                     | Contractor/Architect                                                                                                      |
| Modifications                            | Applicable                                                                     | Architect                                                                                                                 |
| Project payment documents                | Applicable                                                                     | MPS Central Files                                                                                                         |
| Notices and claims                       | Applicable                                                                     | MPA Central Files                                                                                                         |
| Building Information Modeling            | Applicable                                                                     | Architect                                                                                                                 |
| All other construction related documents | Applicable                                                                     | Contractor                                                                                                                |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.  
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*

(Paragraph deleted)

§ .

§ 3.2.3 The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

§ 3.3 The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

#### § 3.4 Unauthorized Use

##### § 3.4.1 Prior to Establishment of Digital Data Protocols

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

##### § 3.4.2 Following Establishment of Digital Data Protocols

Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

#### § 3.5 Digital Data Management

§ 3.5.1 Centralized electronic document management system use on the Project shall be:

*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

☒ [ X ] The Parties intend to use a centralized electronic document management system on the Project.

☐ [ ] The Parties do not intend to use a centralized electronic document management system on the Project.

§ 3.5.2 If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

§ 3.5.3 Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

**Responsible Project Participant**  
Contractor

**Project Milestone**  
Project Construction begins

#### ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

§ 4.1 If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:

Init.



- [ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

- [ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

**§ 4.2 Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

| Project Portion for Modeling | Responsible Project Participant |
|------------------------------|---------------------------------|
| Project design               | Architect                       |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.

*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**§ 4.5 Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

**§ 4.5.1** The Modeling protocols shall address the following:

- 1 Identification of the Model Element Authors;
- 2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
- 3 Identification of the required LOD of each Model Element at each identified Project milestone;
- 4 Identification of the construction classification systems to be used on the Project;
- 5 The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
- 6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
- 7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
- 8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
- 9 Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.

*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

None

Init.



(Paragraph deleted)

§ .

§ 4.5.4 The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

§ 4.6 The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

#### § 4.7 Unauthorized Use

##### § 4.7.1 Prior to Establishment of Modeling Protocols

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

##### § 4.7.2 Following Establishment of Modeling Protocols

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

#### § 4.8 Model Management

§ 4.8.1 The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

Responsible Project Participant

Project Milestone

§ 4.8.2 **Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- .1 Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed upon reference datum
- .2 Model file storage location(s)
- .3 Processes for transferring and accessing Model files
- .4 Naming conventions as defined in the Owner's Revise and Drafting Standards document.
- .5 Processes for aggregating Model files from varying software platforms
- .6 Model access rights
- .7 Identification of design coordination and clash detection procedures.
- .8 Model security requirements
- .9 Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

§ 4.8.3 **Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- .1 Collect incoming Models:
  - .1 Coordinate submission and exchange of Models
  - .2 Create and maintain a log of Models received

Init.

- .3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
- .4 Maintain a record copy of each Model file received
- .2 Aggregate Model files and make them available for Authorized Uses
- .3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
- .4 Manage Model access rights
- .5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and autocad

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.

*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model                | Applicability to Project<br><i>(Applicable or Not Applicable)</i> | Responsible Project Participant | Location of Detailed Description of Requirements and Services<br><i>(Section 4.10 below or in an attachment to this exhibit and identified below)</i> |
|----------------------------------------|-------------------------------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>§ 4.9.1</b> Remodeling              | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.2</b> Wayfinding and Mapping  | Applicable                                                        | Architect                       |                                                                                                                                                       |
| <b>§ 4.9.3</b> Asset/FF & E Management | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.4</b> Energy Management       | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.5</b> Space Management        | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.6</b> Maintenance Management  | Applicable                                                        | Owner                           |                                                                                                                                                       |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and Autocad formats.

## ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with REVIT files that were created for the project. The files shall include the as designed project.

# Additions and Deletions Report for AIA® Document E203™ – 2013

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 09:58:50 CT on 12/30/2022.

## PAGE 1

This Exhibit dated the 17th day of Janaury in the year two thousand and twenty-three is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

North High School Renovation and CTE Center Phase 2  
1500 James Avenue North, Minneapolis, MN 55411

...

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, ~~and agreed to the most recent Project specific versions of AIA Document G201™ 2013, Project Digital Data Protocol Form and AIA Document G202™ 2013, Project Building Information Modeling Protocol Form.~~ Project.

...

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

## PAGE 2

§ 1.4.1 **Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~

...

§ 1.4.6 **Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~

## PAGE 3

|                                         |                   |                          |
|-----------------------------------------|-------------------|--------------------------|
| Project Agreements and Modifications    | <u>Applicable</u> | <u>MPS Central Files</u> |
| Project communications                  | <u>Applicable</u> | <u>MPS Central Files</u> |
| Architect's pre-construction submittals | <u>Applicable</u> | <u>MPS Central Files</u> |

|                                          |                   |                             |
|------------------------------------------|-------------------|-----------------------------|
| Contract Documents                       | <u>Applicable</u> | <u>MPS Central Files</u>    |
| Contractor's submittals                  | <u>Applicable</u> | <u>Contractor/Architect</u> |
| Subcontractor's submittals               | <u>Applicable</u> | <u>Contractor/Architect</u> |
| Modifications                            | <u>Applicable</u> | <u>Architect</u>            |
| Project payment documents                | <u>Applicable</u> | <u>MPS Central Files</u>    |
| Notices and claims                       | <u>Applicable</u> | <u>MPA Central Files</u>    |
| Building Information Modeling            | <u>Applicable</u> | <u>Architect</u>            |
| All other construction related documents | <u>Applicable</u> | <u>Contractor</u>           |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

**§ 3.2.2** The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.

**§ .**

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants protocols.

...

Following agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[ ☒ ] The Parties intend to use a centralized electronic document management system on the Project.

...

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth in the latest version of G201–2013 approved by the Project Participants.

...

Contractor  
**PAGE 5**

Project Construction begins

[ ☒ ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design

Architect

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants and further described for each LOD in AIA Document G202-2013.

Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

...

None

**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202-2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.

§ .

#### **PAGE 6**

Following agreement to, and documentation of, the Modeling protocols in AIA Document G202-2013, protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

- .1 Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed upon reference datum

...

- .4 Naming conventions as defined in the Owner's Revise and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

#### **PAGE 7**

Transmit to MPS the model in PDF, Revit and autocad

...

|                |                         |                   |                  |  |
|----------------|-------------------------|-------------------|------------------|--|
| <b>§ 4.9.1</b> | Remodeling              | <u>Applicable</u> | <u>Owner</u>     |  |
| <b>§ 4.9.2</b> | Wayfinding and Mapping  | <u>Applicable</u> | <u>Architect</u> |  |
| <b>§ 4.9.3</b> | Asset/FF & E Management | <u>Applicable</u> | <u>Owner</u>     |  |
| <b>§ 4.9.4</b> | Energy Management       | <u>Applicable</u> | <u>Owner</u>     |  |
| <b>§ 4.9.5</b> | Space Management        | <u>Applicable</u> | <u>Owner</u>     |  |
| <b>§ 4.9.6</b> | Maintenance Management  | <u>Applicable</u> | <u>Owner</u>     |  |

...

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and Autocad formats.

...

As part of Basic Services, the Architect shall provide the Owner with REVIT files that were created for the project. The files shall include the as designed project.



## **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 09:58:50 CT on 12/30/2022 under Order No. 2114296869 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
12/30/2022

\_\_\_\_\_  
(Dated)



 **AIA<sup>®</sup> Document A232<sup>™</sup> – 2019*****General Conditions of the Contract for Construction, Construction Manager as Adviser  
Edition*****for the following PROJECT:***(Name, and location or address)*

North High School Renovations and CTE Center Phase 2  
1500 James Avenue North, Minneapolis, MN 55411

**THE CONSTRUCTION MANAGER:***(Name, legal status, and address)*

Kraus-Anderson Construction Company  
501 South Eighth Street, Minneapolis, MN 55404

**THE OWNER:***(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**THE ARCHITECT:***(Name, legal status, and address)*

LSE Architects  
100 Portland Avenue South, #100, Minneapolis, MN 55401

**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.

This document is intended to be used in conjunction with AIA Documents A132<sup>™</sup>–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132<sup>™</sup>–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132<sup>™</sup>–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.

**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**§ 1.1.3 The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

**§ 1.1.7 The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**§ 1.1.8 The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.9 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

## **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

## **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

## **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to

whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court



or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.4** If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

**§ 2.3.5** If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 2.3.7** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.3.8** The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants'

additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.



§ 3.2.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

§ 3.2.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

§ 3.2.4 If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.5 The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

§ 3.2.6 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.7 The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

#### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

§ 3.4.5 In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

§ 3.4.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

#### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents

and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 Permits, Fees, Notices, and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager,



determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of

commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

### **§ 3.11 Documents and Samples at the Site**

**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

### **§ 3.12 Shop Drawings, Product Data, and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review

by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must



satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction



Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

## **ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

**§ 4.1.3** Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's consultants (1) during construction; (2) until final payment is due; and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will 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 will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.2.2 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 **Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 The Architect will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or 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.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.



§ 4.2.18 The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

§ 4.2.19 Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.20 Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

*(Paragraph deleted)*

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written

confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

### **§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

**§ 6.1.3** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors

shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

## **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not reasonably discoverable.

**§ 6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

**§ 6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or

substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;
- .3 For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;
- .4 For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;
- .5 Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

## **§ 7.2 Change Orders and Change Proposals**

**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

## **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without



invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding \$25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on

the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order 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. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

#### **§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

- .1 Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
- .2 Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
- .3 Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
- .4 Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
- .5 Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

- .1 Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;
- .2 In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
- .3 Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
- .4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;
- .5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the

Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

### § 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.



§ 9.3.1.2 Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

§ 9.3.1.4 Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

§ 9.3.4 In each Application for Payment, the Contractor shall certify as follows:

"That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

## § 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

**§ 9.4.2** Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 9.4.2.1** Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

**§ 9.4.3** The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.6** The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of



- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or other Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### **§ 9.7 Failure of Payment**

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect then the Contractor may, upon ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up which shall be accomplished as provided in Article 7.

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and when the Architect issues a Certificate of Substantial Completion.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.3** Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor’s failure to complete previously listed corrective or uncompleted work, the Architect’s expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

#### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor’s Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors’ notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents



and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **§ 9.11 Damages for Delay**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the

Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

## **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

## **§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.

### § 10.3 Hazardous Materials

§ 10.3.1 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

- .1 Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
- .2 The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

§ 10.3.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

§ 10.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

*(Paragraph deleted)*

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

§ 10.3.6 Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

§ 10.3.7 The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

§ 10.3.8 The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.



## **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

§ 11.1.5 Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

§ 11.1.6 The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## § 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors,

Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Paragraph deleted)*

#### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

#### **§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.



## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby.

#### § 12.2.2 After Substantial Completion

*(Paragraphs deleted)*

§ 12.2.2.1 If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation from the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### **§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the

Contractor shall give a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe procedures. The Owner shall bear such costs, except as provided in Section 13.4.3.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

**§ 13.4.5** If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.5 Interest**

All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.



Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.1.5 No Right to Stop Work for Non-Payment**

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10)

days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

#### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

#### **§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

*(Paragraph deleted)*

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

**§ 15.1.1 Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

### § 15.1.3 Notice of Claims

**§ 15.1.3.1** Claims by Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

### § 15.1.4 Continuing Contract Performance

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.6 Claims for Additional Time

**§ 15.1.6.1** If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

(Paragraphs deleted)

## **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

(Paragraphs deleted)

## **§ 15.3 Mediation**

**§ 15.3.1** Any claim, dispute or other matter in question or arising out of or related to the Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** 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 and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)



# Additions and Deletions Report for AIA<sup>®</sup> Document A232™ – 2019

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

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## PAGE 1

North High School Renovations and CTE Center Phase 2  
1500 James Avenue North, Minneapolis, MN 55411

...

Kraus-Anderson Construction Company  
501 South Eighth Street, Minneapolis, MN 55404

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

LSE Architects  
100 Portland Avenue South, #100, Minneapolis, MN 55401

## PAGE 3

§ 1.1.1.1 Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

## PAGE 4

§ 1.1.10 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith. Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

...

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the ~~indicated~~ intended results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

...

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5.1** 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

...

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

## PAGE 5

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, ~~Exhibit~~ or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol ~~Form~~, Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or ~~authorization~~. authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

## PAGE 6



**§ 2.3.5** ~~The~~ If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~ Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

#### PAGE 7

**§ 3.1.3** The Contractor shall ~~not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.~~ hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

**§ 3.2.1** ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally~~ The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors.

inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require. Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.5 The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

§ 3.2.6 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

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§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.7 The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

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§ 3.4.4 The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.



§ 3.4.5 In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

§ 3.4.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

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§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

§ 3.5.3 Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

§ 3.5.4 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

§ 3.5.5 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

...

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

...

§ 3.7.3 If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume appropriate full responsibility for such Work and shall bear the costs attributable

to correction-attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ~~14~~ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

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**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work~~Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

...

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

...

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

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**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

...

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed. § 3.11.1 The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

§ 3.11.2 No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

#### PAGE 13

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

...

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and approved by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

§ 3.12.8 The Work shall be in accordance with approved-accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written approval acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval acceptance thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's approval acceptance of a resubmission shall not apply to such revisions.

#### PAGE 14

§ 3.13.3 Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such



facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

...

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

#### PAGE 15

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall ~~indemnify~~ indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that which~~ would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

...

§ 3.18.3 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

...

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's ~~representatives during construction until the date the Architect issues the final Certificate for Payment.~~ consultants (1) during construction; (2) until final payment is due; and (3) with the

Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the ~~portion of the Work completed, Work completed,~~ to endeavor to guard the Owner against defects and deficiencies in the Work, 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 will 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 will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.

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**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the ~~Owner, Owner unless otherwise provided.~~ The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

...

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or ~~advisable, advisable for implementation of the intent of the Contract Documents,~~ the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

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**§ 4.2.11** The Architect ~~will will,~~ and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness or~~ Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.

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**§ 4.2.18** The Architect will interpret and decide matters concerning performance ~~under, and under the requirements of,~~ the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness,~~ with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith. Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 4.2.21** The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

...

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

...

**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time~~ The Contract Sum shall be increased or decreased by the difference, if any, difference in cost occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work, issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.



**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

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~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~  
**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

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**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent, reasonably discoverable.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or

~~defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.~~

...

~~§ 6.2.5 The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.~~

~~§ 6.2.6 The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.~~

...

~~If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible. rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..~~

...

~~§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.~~

...

~~§ 7.1.4 The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.~~

~~§ 7.1.5 In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:~~

- ~~.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;~~
- ~~.2 For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;~~
- ~~.3 For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;~~
- ~~.4 For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;~~
- ~~.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;~~
- ~~.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.~~

## **§ 7.2 Change Orders and Change Proposals**

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

§ 7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

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- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Change Order shall be prepared on AIA Document G731.

§ 7.2.3 The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

§ 7.2.4 If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

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§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others~~ others (at rates approved by the Owner);

...

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order immediately.

...



**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for ~~Payment.~~ Payment up to and not exceeding \$25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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The Architect may order 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. The Architect's order for minor changes shall be in ~~writing.~~ writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

...

**§ 8.1.4** The term "day" ~~as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.~~ shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the ~~Contract Time.~~ Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

- .1 Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
- .2 Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets

- .3 Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
- .4 Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
- .5 Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

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**§ 8.3.1** If the Contractor is delayed at any time in the ~~commencement or~~ progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) or~~ (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

- .1 Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;
- .2 In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
- .3 Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
- .4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;
- .5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
- .6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
- .7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

§ 8.3.4 The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

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§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732-2019, Application and Certificate for Payment, supported by AIA Document G703-1992, Continuation Sheet.

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§ 9.3.1.2 Applications for Payment Such applications shall not include requests for payment for portions of the Work for which the of amounts the Contractor does not intend to pay a Subcontractor or supplier, or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

§ 9.3.1.4 Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

"That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

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**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

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**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect ~~or awarded by binding dispute resolution~~, then the Contractor may, upon ~~seven~~ ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and ~~start-up, plus interest as provided for in the Contract Documents.~~ start-up which shall be accomplished as provided in Article 7.

...

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended ~~use~~ use and when the Architect issues a Certificate of Substantial Completion.



**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or ~~corrected prior to final payment.~~ corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

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**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special

warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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#### **§ 9.11 Damages for Delay**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

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If either party suffers injury or ~~damage~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 24-ten (10) days after ~~discovery~~-first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.

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**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless,



the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect of the condition in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

- .1 Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
- .2 The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred. Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

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In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

**§ 11.1.5 Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.**

**§ 11.1.6 The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.**

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**§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.**

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**§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.**

...



§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall ~~deposit the insurance proceeds in a separate account and make the appropriate distributions.~~ Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **§ 11.6 Bonds**

§ 11.6.1 Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

§ 11.6.2 In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

§ 11.6.3 The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

§ 11.6.4 The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

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The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. ~~Costs-~~The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary ~~thereby, shall be at the Contractor's expense thereby.~~

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.2.1** If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation from the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, ~~and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice authority.~~ Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for observe~~ such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely~~ a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for such procedures.~~ Such observe procedures. The Owner shall bear such costs, except as provided in Section ~~13.4.3,~~ shall be at the Owner's expense. 13.4.3.

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132-2019 Agreement on this Project.

### **§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the



Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.7 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

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#### **§ 14.1.5 No Right to Stop Work for Non-Payment**

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

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§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

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§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim, the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

...

**§ 15.1.3.1** Claims by ~~either the Owner or Contractor~~, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the ~~other party~~ Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party~~ the Contractor under this Section 15.1.3.1 shall be initiated within ~~21 ten~~ (10) days after occurrence of the event giving rise to such Claim or within ~~21 ten~~ (10) days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for ~~an any~~ increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

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**~~§ 15.1.7 Waiver of Claims for Consequential Damages.~~** ~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~.1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~.2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

...

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.~~

**~~§ 15.2.6.1~~** ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation~~

within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy~~ Any claim, dispute or other matter in question or arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. ~~Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.~~

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. 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 and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** 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.

## **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** 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 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.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

## **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 09:57:04 CT on 12/30/2022 under Order No. 2114296869 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A232™ – 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



\_\_\_\_\_  
(Signed)

Executive Director

\_\_\_\_\_  
(Title)

12/30/2022

\_\_\_\_\_  
(Dated)

## FY21 Las Estrellas & Pratt Ventilation & Filtration Upgrades Project

**Contract Sum: \$4,909,300.00**

**Contractor: SHEEHY CONSTRUCTION COMPANY**

### Project Name and Number

Las Estrellas & Pratt Ventilation & Filtration Upgrades Project

Las Estrellas: 1201 University Ave NE, Minneapolis, MN 55413

Pratt: 66 Malcolm Ave SE, Minneapolis, MN 55414

Minneapolis Public Schools Project Number 21LasE001 & 21Prat001

OP#23-2303

### Description

HVAC upgrades to provide better ventilation & filtration at Las Estrellas & Pratt Schools.

### Contract Sum details

| Item                               | Price          | Status   |
|------------------------------------|----------------|----------|
| Base Bid:                          | \$4,909,300.00 | ACCEPT   |
| Unit Price #01 (LVT at Mechanical) | \$700.00       | REJECTED |

### Contract Documents

Cover Page

AIA Document A101-2017

AIA Document A101 Exhibit A-2017

Exhibit B – Project Charter

Exhibit C – Project Schedule

AIA Document E203-2013

AIA Document A201-2017



# AIA® Document A101® – 2017

## **Standard Form of Agreement Between Owner and Contractor** where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the 14 day of February in the year 2023  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

and the Contractor:  
(Name, legal status, address and other information)

Sheehy Construction Company  
360 Larpenteur Avenue West – Suite 200  
St. Paul, MN 55113

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

Las Estrellas & Pratt Ventilation & Filtration Upgrades Project  
Las Estrellas: 1201 University Ave NE, Minneapolis, MN 55413  
Pratt: 66 Malcolm Ave SE, Minneapolis, MN 55414

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

Wold Architects and Engineers  
332 Minnesota Street, Suite W2000  
St. Paul, MN 55101

The Owner and Contractor 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.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

### EXHIBIT A INSURANCE AND BONDS

#### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

#### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

#### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 The Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

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**User Notes:**

(3B9ADA40)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ X ] By the following date: Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates as defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table Deleted)*

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### **ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

#### **§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Table Deleted)*

**§ 4.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.4** Unit prices, if  
*any are defined in EXH-B Project Charter.*

*(Table Deleted)*

#### **§ 4.5 Liquidated damages**

*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays,*

Init.

*expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.*

*(Paragraph Deleted)*

*After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

## **ARTICLE 5 PAYMENTS**

### **§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Architect, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

*(Paragraph Deleted)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;

Init.

- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

#### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Paragraph Deleted)

5% (five percent)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*

determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

(Paragraph Deleted)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

#### § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.
- .3 all lien waivers and IC134 forms have been delivered to the Owner.

Init.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

### **§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.  
*(Paragraph Deleted)*

### **§ 5.4 Prompt Payment to Subcontractors**

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. 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 party responsible for payment shall pay the actual penalty due to the party requesting payment.

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017.

#### **§ 6.1.1 Mediation**

Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

*If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.*

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

### **§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2017



☒ [ X ] Litigation in a court of competent jurisdiction

☐ [ ] Other (*Specify*)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

#### **ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)*

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

#### **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner’s representative:

*(Name, address, email address, and other information)*

Jeff Helstrom: Email: jeffrey.helstrom@mpls.k12.mn.us Ph: 612-207-7859  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**§ 8.3** The Contractor’s representative:

*(Name, address, email address, and other information)*

Danial M. Krause  
Sheehy Construction Company  
360 Larpenteur Avenue West – Suite 200  
St. Paul, MN 55113

**§ 8.4** Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

#### **§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

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**User Notes:**

(3B9ADA40)

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 8.7 Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2020

- .5 Drawings

Number

Title

Date

- .6 Specifications

Section

Title

Date

Pages

- .7 Addenda, if any:

Number

Date

Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

*(Paragraphs Deleted)*

[EXH-B Project Charter](#)

*(Paragraph Deleted)*

[EXH-C Owner Insurance](#)

[EXH-D Project Schedule](#)

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**User Notes:**

(3B9ADA40)

(Paragraph Deleted)

(Table Deleted)

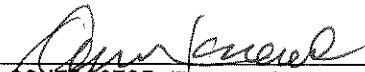
[ ] Supplementary and other Conditions of the Contract:

| Document | Title                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Date | Pages |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------|
| 9        | Other documents, if any, listed below:<br><i>(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)</i> |      |       |

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

  
\_\_\_\_\_  
CONTRACTOR (Signature)

\_\_\_\_\_  
Daniel M. Krause, President  
(Printed name and title)

Init.

# Additions and Deletions Report for AIA® Document A101® – 2017

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 14:10:51 CT on 01/09/2023.

## PAGE 1

**AGREEMENT** made as of the 14 day of February in the year 2023

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Sheehy Construction Company  
360 Larpenteur Avenue West – Suite 200  
St. Paul, MN 55113

...

Las Estrellas & Pratt Ventilation & Filtration Upgrades Project  
Las Estrellas: 1201 University Ave NE, Minneapolis, MN 55413  
Pratt: 66 Malcolm Ave SE, Minneapolis, MN 55414

...

Wold Architects and Engineers  
332 Minnesota Street, Suite W2000  
St. Paul, MN 55101

## PAGE 2

[ X ] A date set forth in a notice to proceed issued by the Owner.

...

**§ 3.3.1** ~~Subject to adjustments of the Contract Time as provided in the Contract Documents, the~~ The Contractor shall achieve Substantial Completion of the entire Work:

## PAGE 3

[ X ] By the following date: Defined in EXH-D Project Schedule

...

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following ~~dates~~: dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

...

**Portion of Work**

**Substantial Completion Date**

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract~~. ~~The Contract Sum shall be (\$ )~~; Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** Alternates, if any, included in the Contract ~~Sum~~: Sum are defined in EXH-B Project Charter.

...

**Item**

**Price**

...

**§ 4.2.2** Subject to the conditions noted ~~below~~, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

...

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

...

**Item**

**Price**

**Conditions for Acceptance**

...

**§ 4.3** Allowances, if any, included in the Contract ~~Sum~~: Sum are defined in EXH-B Project Charter.

...

*(Identify each allowance.)*

...

**Item**

**Price**

...

#### § 4.4 Unit prices, if any:

...

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)any are defined in EXH-B Project Charter.*

...

Item

Units and Limitations

Price per Unit (\$0.00)

...

#### § 4.5 Liquidated damages, if any:damages

#### PAGE 4

*(Insert terms and conditions for liquidateddamages, if any.)Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

...

damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the

...

Owner.

...

#### § 4.6 Other:

...

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

...

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~month.

...



~~§ 5.1.3 Provided that When an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.~~

...

~~(Federal, state or local laws may require payment within a certain period of time.)~~

...

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

## PAGE 5

~~(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)~~

...

5% (five percent)

...

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

...

~~(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)~~Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as

...

**§ 5.1.7.3** ~~Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect

and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

...

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the ~~site~~ site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

...

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

## PAGE 6

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ 45 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~

...

Payment.

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

...

*(Insert rate)*

...

## **§ 5.4 Prompt Payment to Subcontractors**

...

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of interest agreed upon, if any, payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party

requesting payment on any undisputed amount not paid on time. 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 party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless A201–2017.

...

### **§ 6.1.1 Mediation**

...

the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

...

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

...

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.) If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.*

...

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

## **PAGE 7**

**[ X ]** Litigation in a court of competent jurisdiction

...

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

...

Jeff Helstrom: Email: jeffrey.helstrom@mpls.k12.mn.us Ph: 612-207-7859  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Danial M. Krause  
Sheehy Construction Company  
360 Larpenteur Avenue West – Suite 200  
St. Paul, MN 55113

## PAGE 8

Owner prohibits Contractor from using the Work in any marketing material or business development practice.  
Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the  
Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2020

...

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

...

☐ AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:

...

[EXH-B Project Charter](#)

...

*(Insert the date of the E204-2017 incorporated into this Agreement.)*

...

[EXH-C Owner Insurance](#)

...

[EXH-D Project Schedule](#)

[ - ] The Sustainability Plan:

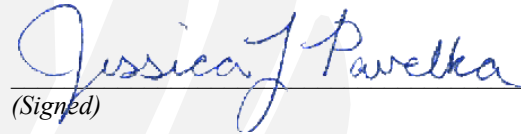
...

| Title | Date | Pages |
|-------|------|-------|
|-------|------|-------|

## **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 14:10:51 CT on 01/09/2023 under Order No. 2114296869 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

Manager, Capital Planning & Construction

(Title)

01/09/2023

(Dated)





# AIA® Document A101® – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 14 day of February in the year 2023  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

Las Estrellas & Pratt Ventilation & Filtration Upgrades Project  
Las Estrellas: 1201 University Ave NE, Minneapolis, MN 55413  
Pratt: 66 Malcolm Ave SE, Minneapolis, MN 55414

**THE OWNER:**  
(Name, legal status and address)

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

**THE CONTRACTOR:**  
(Name, legal status and address)

Sheehy Construction Company  
360 Larpenteur Avenue West – Suite 200, St. Paul, MN 55113

### TABLE OF ARTICLES

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#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

#### 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.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

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### § A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

#### Causes of Loss

#### Sub-Limit

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

#### Coverage

#### Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

### § A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

#### § A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

#### § A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

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[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage

Limits

## ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

### § A.3.1 General

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

### § A.3.2 Contractor's Required Insurance Coverage

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

### § A.3.2.2 Commercial General Liability

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

§ A.3.2.5 Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

*(Paragraph deleted)*

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

| Type             | Penal Sum (\$0.00) |
|------------------|--------------------|
| Payment Bond     |                    |
| Performance Bond |                    |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



# Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

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 14:11:45 CT on 01/09/2023.

## PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 14 day of February in the year 2023

...

Las Estrellas & Pratt Ventilation & Filtration Upgrades Project  
Las Estrellas: 1201 University Ave NE, Minneapolis, MN 55413  
Pratt: 66 Malcolm Ave SE, Minneapolis, MN 55414

...

Minneapolis Public Schools Special School District #1  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Sheehy Construction Company  
360 Larpenteur Avenue West – Suite 200, St. Paul, MN 55113

## PAGE 2

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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§ A.3.2.1 The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~—(\$ —) each occurrence, —(\$ —) general aggregate, and —(\$ —) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

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**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~—(\$ —) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage,~~ as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits,~~ limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability with policy limits not less than ~~—(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit,~~ Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate,~~ as defined in EXH-C Owner Insurance.

**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ~~—(\$ —) per claim and —(\$ —) in the aggregate,~~ as defined in EXH-C Owner Insurance.

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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)* types and limits of insurance as defined in EXH-C Owner Insurance.

[ — ] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible,

and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

- ☐ **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ~~(\$ )~~ per claim and ~~(\$ )~~ in the aggregate, for Work within fifty (50) feet of railroad property.
- ☐ **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ~~(\$ )~~ per claim and ~~(\$ )~~ in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- ☐ **§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all risks" completed value form.**
- ☐ **§ A.3.3.2.5 Property insurance on an "all risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.**
- ☐ **§ A.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

#### Coverage

#### Limits

### § A.3.4 Performance Bond and Payment Bond

## Exhibit B – Project Charter

### Project Name and Number

Las Estrellas & Pratt Ventilation & Filtration Upgrades Project

Las Estrellas: 1201 University Ave NE, Minneapolis, MN 55413

Pratt: 66 Malcolm Ave SE, Minneapolis, MN 55414

Minneapolis Public Schools Project Number 21LasE001 & 21Prat001

OP#23-2303

### Description

HVAC upgrades to provide better ventilation & filtration at Las Estrellas & Pratt Schools.

### Contract Sum

The Contract Sum shall be \$4,909,300.00.

### Alternates

| Item     | Price          | Status |
|----------|----------------|--------|
| None     |                |        |
| Base Bid | \$4,909,300.00 | ACCEPT |

### Conditions

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
| None |       |                           |

### Allowances

| Item                                           | Price       |
|------------------------------------------------|-------------|
| None                                           |             |
| Unforeseen Existing Conditions – Las Estrellas | \$25,000.00 |
| Unforeseen Existing Conditions - Pratt         | \$25,000.00 |
| Building Permit Las Estrellas                  | \$30,000.00 |
| Building Permit Pratt                          | \$30,000.00 |

### Unit Prices

| Item                                                         | Units and Limitations | Price per Unit | Status   |
|--------------------------------------------------------------|-----------------------|----------------|----------|
| Unit Price #01: LVT Flooring at removed mechanical equipment | EACH                  | \$700.00       | REJECTED |

See attached Exhibits:

1. Sheehy Bid Submitted Bid Form OP#23-2303
2. Wold Recommendation to Award OP#23-2303
3. MPS Notice of Award OP#23-2303
4. Bid Tabulation OP#23-2303

MPS Master

DOCUMENT 00 41 00

BIDDERS NAME Sheehy Construction Company

## BID FORM - Part 1 of 4

Project: Pratt-Las Estrellas Ventilation Improvements

Pratt Elementary School  
66 Malcolm Avenue Southeast  
Minneapolis, Minnesota 55414

Las Estrellas Elementary School  
1201 University Avenue Northeast  
Minneapolis, Minnesota 55413

To: Minneapolis Public Schools (MPS)  
Special School District No. 1  
1250 West Broadway Avenue  
Minneapolis, Minnesota 55411

Official Publication Number: 23-2303

Architect: Wold Architects and Engineers  
332 Minnesota Street, Suite W2000  
St. Paul, Minnesota 55101

BIDDER: Sheehy Construction Company

## BASE BID

- a. I have examined the work site and the Bidding Documents, and hereby propose and agree to furnish all labor, materials, and equipment required to complete the Work.

- b. Base Bid A (refers to scope on Drawings with "PRAT" sheet label):

Written: One Million Seven Hundred Thirty One Thousand Three Hundred DOLLARS

Numerical: \$ 1,731,300.00

- c. Base Bid B (refers to scope on Drawings with "LAS" sheet label):

Written: Three Million Two Hundred Sixty Four Thousand Three Hundred DOLLARS

Numerical: \$ 3,264,300.00

- d. Base Bid C (combined):

Written: Four Million Nine Hundred and Nine Thousand Three Hundred DOLLARS

Numerical: \$ 4,909,300.00



MPS Master

DOCUMENT 00 41 00

BIDDERS NAME Sheehy Construction Company

## UNIT PRICES

- a. Unit Price No. 1: LVT Flooring at Removed Mechanical Equipment (*add/deduct – circle one*):

Written: Seven Hundred DOLLARS

Numerical: \$ 700.00

## ADDENDA

- a. I acknowledge receipt of the following Addenda and have incorporated their provisions into the bid.

No. 1 Date 08/26/2022 No. 2 Date 09/09/2022

No. 3 Date 09/27/2022 No.        Date       

## CONTRACT TIME

- a. I agree to substantially complete the Work by [ August 18th, 2023 ].

## SITE VISIT

- a. I have visited the work site to verify existing conditions in regard to the Contract Documents.

## BID GUARANTY PERIOD

- a. I agree to hold these bids open for a period of sixty (60) days after the bid opening. If this bid is accepted within that period, I agree to execute a contract with the Owner, and to furnish a Labor and Materials Payment Bond and a Performance Bond in the full amount of the Contract.

## PROJECT LABOR AGREEMENT (See Document 00 73 00, Supplementary Conditions)

- a. If awarded a Contract, all labor employed on the Project will comply with the paying of the Project Labor Agreement (PLA). X yes        no

## BID BOND

- a. I enclose a Bid Bond, certified check, or cashier's check in the amount of two percent (2%) of the maximum bid, payable to AMinneapolis Public Schools@.

## EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION (See Appendix to Document 00 21 13, Instruction to Bidders)

- a. I agree to comply with requirements for Equal Employment Opportunity and Affirmative Action.
- b. For construction projects or related materials and supplies over \$10,000 but under \$100,000:  
I have attached to this Bid Form a compliance statement on my company stationary assuring that the contracting firm is an Equal Opportunity/Affirmative Action Employer. (Failure to respond with this information may result in rejection of the Bid Form.)
- c. For construction projects or related materials and supplies over \$100,000:

MPS Master

**DOCUMENT 00 41 00**

**BIDDERS NAME** Sheehy Construction Company

I have attached to this Bid Form verification of having an Affirmative Action Plan approved by Minneapolis Public Schools. (Failure to respond with this information may result in rejection of the Bid Form.)

- d. To complete this portion of the Bid Form; review, complete as indicated within the documents, and **include with your bid submission** the documents titled Bid Form - Part 2 of 4, Diversity Requirements and Reporting; Bid Form - Page 3 of 4, Diversity Subcontractor Performance; and Bid Form - Page 4 of 4, Diverse Vendor Affidavit.

- 1) I have attached Part 2 of 4, Diversity Requirements & Reporting. x yes \_\_\_ no
- 2) I have attached Part 3 of 4, Diversity Subcontractor Performance. x yes \_\_\_ no
- 3) I have attached Part 4 of 4, Diverse Vendor Affidavit. x yes \_\_\_ no

**AFFIRMATIVE ACTION** (See to Appendix to Document 00 21 13, Instruction to Bidders)

- a. I have attached the Affirmative Action Bid Statement.   x   yes      no

**PREVAILING WAGES** (See Document 00 73 46, Wage Determination Schedule)

- a. I have attached the Prevailing Wage Certificate.   x   yes      no

RESPONSIBLE CONTRACTOR

- a. I have attached the Attachment A – Prime Contractor Response   x   yes        no
- b. I have attached the Attachment A1 – First Tier Subcontractor List   x   yes        no

STATUS OF FIRM

- a. Bidder is: ☐ A sole proprietor. ☐ A partnership. ☒ A corporation registered in the state of MN.

SIGNATURE

- a. Name: Daniel M. Krause Title: President
- b. Signature:  Date: 10/04/2022
- c. Firm: Sheehy Construction Company
- d. Address: 360 Larpenteur Avenue West, Suite 200, Saint Paul, MN 55113  
(Street) (City) (State) (Zip Code)
- e. Telephone: (651) 488-6691 Fax: (651) 488-4992
- f. If a partnership, list name and address of all partners. If a corporation, affix corporate seal and list State of Incorporation.
- g. The person signing this form is a person authorized to bind the company they are signing for.

END OF DOCUMENT

MPS Master

DOCUMENT 00 41 00

BIDDERS NAME Sheehy Construction Company



MPS Master

## DOCUMENT 00 41 00

**BID FORM - Part 2 of 4**  
**DIVERSITY REQUIREMENTS AND REPORTING**

I understand that diversity is important to Minneapolis Public Schools and that as part of this Bid, I agree that I will, to the best of my ability and if within the project scope, solicit and use diverse vendors where possible. I also understand the key elements of a diversity program and what qualifies as a diverse vendor<sup>1</sup>.

- a.   X   My company does not qualify as a diverse vendor; if **yes** skip the remaining questions.
- b. If your company qualifies as diverse, please check all appropriate boxes that pertain to your enterprise certifications.
- |                                          |                                             |
|------------------------------------------|---------------------------------------------|
| <u>      </u> Disadvantaged Business     | <u>      </u> Minority Owned and Controlled |
| <u>      </u> Women Owned and Controlled | <u>      </u> Service Disable Veteran       |
| <u>      </u> 8A Certified               | <u>      </u> Veteran Owned                 |
| <u>      </u> GBLT Business              | <u>      </u> Emerging Business             |
| <u>      </u> Small Business             | <u>      </u> Disabled Business             |
- c. If your company qualifies as a diverse vendor, you must submit your certification, Letter of Good Standing, or an Affirmation Affidavit<sup>2</sup> as part of your Bid package.
- d. For all Bids, you must complete Part 3 of 4 of the Bid Form, **DIVERSITY SUBCONTRACTOR PERFORMANCE**. The project forecast section must be completed and submitted as part of your Bid.
- e. I agree that 5% of the total Bid value will be held until Part 3 of 4, **DIVERSITY SUBCONTRACTOR PERFORMANCE**, is submitted with the project actual section completed.
- f. **RECORDS MANAGEMENT AND MAINTENANCE** - District shall have the right to inspect and copy all records pertaining to the use and certification of diverse subcontractors to verify Contractor's compliance with the diversity requirements of this Contract.

---

<sup>1</sup> Please see included document - Diverse Vendor Definitions.

<sup>2</sup> Please see included documents - Certificate Affirmation Document and/or Vendor Affirmation Document

MPS Master

## DOCUMENT 00 41 00

**BID FORM - Part 3 of 4**  
**DIVERSITY SUBCONTRACTOR PERFORMANCE**

The following are the MBE and/or WBE Subcontractors/Suppliers that we solicited and/or intend to subcontract to or purchase materials from.

The Project Forecast section must be completed as part of your Bid submittal. If no spend is anticipated with Diverse subcontractors, then fill in zero (0) on the first Total Dollar Amount line.

If you are the selected Supplier, the Project Actuals section must be completed and submitted to Minneapolis Public Schools before the final milestone payment is released for payment.

## Project Forecast:

| Subcontractor/Supplier   | MBE/WBE    | Trade/Material      | Total Dollar Amount |
|--------------------------|------------|---------------------|---------------------|
| <b>Dziedzic Caulkers</b> | <b>WBE</b> | <b>Joint Sealtn</b> | <b>\$ 5,000.00</b>  |
| _____                    | _____      | _____               | \$ _____            |
| _____                    | _____      | _____               | \$ _____            |
| _____                    | _____      | _____               | \$ _____            |
| _____                    | _____      | _____               | \$ _____            |
| _____                    | _____      | _____               | \$ _____            |
| _____                    | _____      | _____               | \$ _____            |

## Project Actuals:

| Subcontractor/Supplier | MBE/WBE | Trade/Material | Total Dollar Amount |
|------------------------|---------|----------------|---------------------|
| _____                  | _____   | _____          | \$ _____            |
| _____                  | _____   | _____          | \$ _____            |
| _____                  | _____   | _____          | \$ _____            |
| _____                  | _____   | _____          | \$ _____            |
| _____                  | _____   | _____          | \$ _____            |
| _____                  | _____   | _____          | \$ _____            |
| _____                  | _____   | _____          | \$ _____            |

MPS Master

DOCUMENT 00 41 00

**BID FORM - Part 4 of 4  
Minneapolis Public Schools  
DIVERSE VENDOR AFFIDAVIT**

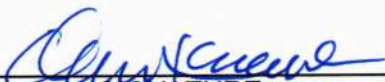
STATE OF MINNESOTA        }  
                                              }  
COUNTY OF RAMSEY        }

Affidavit of Sheehy Construction Company

Daniel M. Krause, being duly sworn as owner/operator of or as designated representative of owner/operator of Sheehy Construction Company, does state the following:

1. That I am attesting with Special School District No. 1 (Minneapolis Public Schools) to the assertion that the aforementioned organization does fall within the recognized diversity category of NOT APPLICABLE.
2. That I am attesting with Special School District No. 1 (Minneapolis Public Schools) to the assertion that said organization does fall within the aforementioned diversity category due to NOT APPLICABLE.
3. That I understand that this document is legal in nature.
4. That I understand that should Special School District No. 1 (Minneapolis Public Schools) come to learn that my above assertions are false, this revelation can have an effect on said organization's ability to work with the school district in any given capacity in the future.

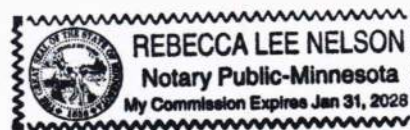
Daniel M. Krause  
PRINT FULL NAME

  
SIGNATURE

Sworn to and subscribed before me this 4th day of October, 2022.

Affix Notary Seal Here

Rebecca Lee Nelson  
Notary Public  
My commission expires on January 31, 2028





October 17, 2022

**Jeffrey Helstrom**  
Minneapolis Public Schools  
Special School District #1  
1250 West Broadway Avenue  
Minneapolis, Minnesota 55441



Re: Special School District #1 – Minneapolis Public Schools  
Pratt-Las Estrellas Ventilation Improvements  
Official Publication No. 22-2220  
Commission No. 212258

Dear Jeff:

On Tuesday, October 4, 2022, a total of three (3) bids were received for the Pratt-Las Estrellas Ventilation Improvements project. A copy of the Bid Tabulation is enclosed for your review. The bids were of an acceptable range, and we feel this is fair value for the work. Our recommendation is to award the contract to Sheehy Construction as follows:

|                       |                       |
|-----------------------|-----------------------|
| <u>Base Bid</u>       | <u>\$4,909,300.00</u> |
| <b>Total Contract</b> | <b>\$4,909,300.00</b> |

Upon approval, we will forward contracts to Sheehy Construction to allow them to begin the project. The contractor is ready to proceed to meet the project's schedule.

Sincerely,

Wold Architects and Engineers

A handwritten signature in black ink, appearing to read "A. Ausing".

Aaron Ausing | AIA  
Associate

Enclosure

cc: Curtis Hartog, SSD #1  
Sal Bagley, Wold  
Robert Sehm, Wold  
Patrick Triggs, Wold  
Contract File

TD/SSD\_1/212258/crsp/oct22

**Wold Architects and Engineers**  
332 Minnesota Street, Suite W2000  
Saint Paul, MN 55101  
woldae.com | 651 227 7773

**PLANNERS  
ARCHITECTS  
ENGINEERS**



1250 W. Broadway Ave  
Minneapolis, Minnesota 55411  
Phone: 612-668-5400

10/28/2022

**Sheehy Construction Company**  
360 Larpenteur Ave. West, Suite #200  
St. Paul, MN 55113

Dear Daniel Krause,

Minneapolis Public Schools would like to thank you for submitting your bid for our MPS OP 23-2303 Pratt-Las Estrellas Ventilation Upgrades. We recognize and value the time and effort you have put forth in preparing a competitive and viable proposal to meet our District's needs.

We are pleased to inform you that **Sheehy Construction Company** has been selected for the MPS Pratt-Las Estrellas Ventilation Upgrades, pending Board Approval and negotiations (if needed).

If you have any questions or concerns, please feel free to contact me for information regarding the bid process and procurement information.

We look forward to continuing our mutually beneficial working relation with **Sheehy Construction Company**.

Sincerely,

**Nevonia Rainwater**  
**Director of Business Services**  
Minneapolis Public Schools  
1250 West Broadway Ave.  
Minneapolis, MN 55411  
Office: 612-668-0381 Fax: 612-668-0385 Cell: 612-290-9482



|                                                                                                                                                                                                                                                                         |                           |                        |                  |                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------|------------------|------------------------|
| Special School District No. 1<br>Official Publication No. 23-2303<br>Pratt-Las Estrellas Ventilation Improvements<br>Bids Due: 10/4/2022 2:00 PM; Public Bid Opening 10/4/2022 2:30 PM                                                                                  |                           |                        |                  |                        |
|                                                                                                                                                                                                                                                                         | NAME OF COMPANY (BIDDER): | Morcon<br>Construction | Shaw-Lundquist   | Sheehy<br>Construction |
|                                                                                                                                                                                                                                                                         |                           |                        |                  |                        |
| BASE BID A                                                                                                                                                                                                                                                              |                           | \$1,793,484.00         | \$1,734,728.00   | \$1,731,300.00         |
| BASE BID B                                                                                                                                                                                                                                                              |                           | \$3,621,208.00         | \$3,328,819.00   | \$3,264,300.00         |
| BASE BID C                                                                                                                                                                                                                                                              |                           | \$5,414,693.00         | \$5,051,156.00   | \$4,909,300.00         |
| UNIT PRICES - LVT FLOORING                                                                                                                                                                                                                                              |                           | \$125.00/SF            | DEDUCT \$3.00/SF | \$700.00               |
| ADDENDUM #1                                                                                                                                                                                                                                                             |                           | YES                    | YES              | YES                    |
| ADDENDUM #2                                                                                                                                                                                                                                                             |                           | YES                    | YES              | YES                    |
| ADDENDUM #3                                                                                                                                                                                                                                                             |                           | YES                    | YES              | YES                    |
| BID BOND: 2%                                                                                                                                                                                                                                                            |                           | YES                    | YES              | YES                    |
| Part 2 of 4, Diversity Requirements & Reporting (00 41 00, Part 2)                                                                                                                                                                                                      |                           | YES                    | YES              | YES                    |
| Part 3 of 4, Diversity Subcontractor Performance (00 41 00, Part 3)                                                                                                                                                                                                     |                           | YES                    | YES              | YES                    |
| Part 4 of 4, Diverse Vendor Affidavit (00 41 00, Part 4)                                                                                                                                                                                                                |                           | YES                    | YES              | YES                    |
| Affirmative Action Certificate of Compliance and Affirmative Action Plan (00 21 13)                                                                                                                                                                                     |                           | YES                    | YES              | YES                    |
| Prevailing Wage Cert - Letter of Assent (00 73 46)                                                                                                                                                                                                                      |                           | YES                    | YES              | YES                    |
| Attachment A - Prime Contractor Response (00 22 13a)                                                                                                                                                                                                                    |                           | YES                    | YES              | YES                    |
| Attachment A1 - First Tier Sub List (00 22 13b)                                                                                                                                                                                                                         |                           | YES                    | YES              | YES                    |
|                                                                                                                                                                                                                                                                         |                           |                        |                  |                        |
| We, the undersigned, hereby certify the bids were opened publically and read aloud.                                                                                                                                                                                     |                           |                        |                  |                        |
| Jibril Osman(Senior Buyer)                                                                                                                                                                                                                                              |                           |                        |                  |                        |
|                                                                                                                                                                                                                                                                         |                           |                        |                  |                        |
| Above is a tabulation of bids received for our Official Publication on which you submitted a bid. This tabulation is for your information only. The award of the bid will be made at a later date at which time you will be notified if you were the successful bidder. |                           |                        |                  |                        |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:

The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

- a. Worker's Compensation and Employer's Liability Insurance

- i. Coverage A is statutory.
- ii. Coverage B
  - \$500,000 Each Accident
  - \$500,000 Each Employee
  - \$500,000 Policy Limit (Disease)

- b. Comprehensive General Liability Insurance \*

|                                         |             |
|-----------------------------------------|-------------|
| General Aggregate                       | \$1,000,000 |
| Products/Completed Operations Aggregate | \$1,000,000 |
| Per Occurrence                          | \$1,000,000 |
| Medical Payments                        | \$10,000    |

\* The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

- c. Automobile Insurance

|                       |             |
|-----------------------|-------------|
| Per Occurrence        | \$1,000,000 |
| PIP                   | Basic       |
| Underinsured Motorist | \$1,000,000 |
| Uninsured Motorist    | \$1,000,000 |

- d. Professional Liability Insurance

- i. Per Claim
- |  |             |
|--|-------------|
|  | \$2,000,000 |
|--|-------------|

- ii. For projects with an estimated construction Contract Sum of over \$10,000,000 or major structural work an aggregate is required as follows:
 

|           |             |
|-----------|-------------|
| Aggregate | \$4,000,000 |
|-----------|-------------|
- e. Umbrella Liability Insurance
  - i. Per Occurrence \$2,000,000
  - ii. For projects with an estimated construction Contract Sum of over \$10,000,000 or major structural work an aggregate is required as follows:
 

|           |             |
|-----------|-------------|
| Aggregate | \$2,000,000 |
|-----------|-------------|
- f. Manned or Unmanned Aircraft Coverage (if used)
  - i. Per Claim \$1,000,000
  - ii. Aggregate \$1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are \$1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

## 2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in addition to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

### 3. PROFESSIONAL LIABILITY INSURANCE

- a. Professional Liability Coverage of \$2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below \$2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."
- b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.
- c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

### 4. COVERAGE

The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

### 5. GENERALLY

- a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.



- b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

### 1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017

The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

#### a. Commercial General Liability

|                                             |             |
|---------------------------------------------|-------------|
| i. General Aggregate                        | \$1,500,000 |
| ii. Products/Completed Operations Aggregate | \$1,500,000 |
| iii. Per Occurrence                         | \$1,500,000 |

The Owner shall be named as additional insured for Commercial General Liability Insurance

#### b. Automobile Insurance

|                            |             |
|----------------------------|-------------|
| i. Per Occurrence          | \$1,000,000 |
| ii. PIP                    | Basic       |
| iii. Underinsured Motorist | \$1,000,000 |
| iv. Uninsured Motorist     | \$1,000,000 |

#### c. Workers Compensation

- i. Coverage A is statutory.
- ii. Coverage B \$500,000 Each Accident
- iii. \$500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

- i. Per Claim \$2,000,000

For Projects with an estimated construction cost of over \$10,000,000 or major structural work, additional Aggregate coverage of \$4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

- i. Per Claim \$1,000,000
- ii. Aggregate \$1,000,000

f. Property Insurance

- i. Per Claim \$1,000,000
- ii. Aggregate \$1,000,000

This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders "all risk" Insurance

- i. Per Claim \$2,000,000
- ii. Aggregate \$4,000,000

This insurance is only required for additions exceeding \$10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

- i. Aggregate limit \$5,000,000

This insurance is required only for projects larger than \$10,000,000 in total construction costs.

## Exhibit D – Project Schedule

### Project Name and Number

Las Estrellas & Pratt Ventilation & Filtration Upgrades Project

Las Estrellas: 1201 University Ave NE, Minneapolis, MN 55413

Pratt: 66 Malcolm Ave SE, Minneapolis, MN 55414

Minneapolis Public Schools Project Number 21LasE001 & 21Prat001

OP#23-2303

### Description

HVAC upgrades to provide better ventilation & filtration at Las Estrellas & Pratt Schools.

### Schedule

#### Substantial Completion

| Portion of Work                                                  | Substantial Completion Date          |
|------------------------------------------------------------------|--------------------------------------|
| Substantial Completion - Las Estrellas & Pratt                   | August 18 <sup>th</sup> , 2023       |
| Final Completion & Close Out – Las Estrellas & Pratt             | 45 days after Substantial Completion |
| Heating Capable, TAB & Controls Complete – Las Estrellas & Pratt | October 2 <sup>nd</sup> , 2023       |

## ***Building Information Modeling and Digital Data Exhibit***

This Exhibit dated the 13 day of March in the year 2018 is incorporated into the agreement (the “Agreement”) between the Parties for the following Project:  
(*Name and location or address of the Project*)

### **TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS**
- 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**
- 3 DIGITAL DATA PROTOCOLS**
- 4 BUILDING INFORMATION MODELING PROTOCOLS**
- 5 OTHER TERMS AND CONDITIONS**

### **ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

### **§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and memorialized in AIA Documents G201–2013 and G202–2013, will result in a change in the Party’s scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party’s waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

### **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.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

## **§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the “Model,” which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term “Authorized Uses” refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as “confidential.”

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, “written” or “in writing” shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, “written notice” shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms “Party” and “Parties” refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

## ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital Data established pursuant to the terms of this Exhibit.

§ 2.2 If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

§ 2.2.1 The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

§ 2.3 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

§ 2.4 Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

§ 3.1 **Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| Anticipated Digital Data                | Applicability to the Project<br><i>(Indicate Applicable or Not Applicable)</i> | Location of Detailed Description<br><i>(Section 3.1.1 below or in an attachment to this exhibit and identified below)</i> |
|-----------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Project Agreements and Modifications    |                                                                                |                                                                                                                           |
| Project communications                  |                                                                                |                                                                                                                           |
| Architect's pre-construction submittals |                                                                                |                                                                                                                           |
| Contract Documents                      |                                                                                |                                                                                                                           |
| Contractor's submittals                 |                                                                                |                                                                                                                           |
| Subcontractor's submittals              |                                                                                |                                                                                                                           |
| Modifications                           |                                                                                |                                                                                                                           |
| Project payment documents               |                                                                                |                                                                                                                           |
| Notices and claims                      |                                                                                |                                                                                                                           |
| Building Information Modeling           |                                                                                |                                                                                                                           |
|                                         |                                                                                |                                                                                                                           |

§ 3.1.1 Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.



**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.

*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*

**§ 3.2.2** The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.

**§ 3.2.3** The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.

#### **§ 3.4 Unauthorized Use**

##### **§ 3.4.1 Prior to Establishment of Digital Data Protocols**

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

##### **§ 3.4.2 Following Establishment of Digital Data Protocols**

Following agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

#### **§ 3.5 Digital Data Management**

**§ 3.5.1** Centralized electronic document management system use on the Project shall be:

*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

☒ **[ X ]** The Parties intend to use a centralized electronic document management system on the Project.

☐ **[ ]** The Parties do not intend to use a centralized electronic document management system on the Project.

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth in the latest version of G201–2013 approved by the Project Participants.

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)

Responsible Project Participant

Project Milestone

#### ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

§ 4.1 If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:

[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

§ 4.2 **Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

Project Portion for Modeling

Responsible Project Participant

§ 4.3 **Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants and further described for each LOD in AIA Document G202–2013.

Authorized Uses of the Model for the Project are defined in Article 7 of AIA B101-2017.

§ 4.4 **Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.

(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)

Defined in EXH-B Project Design Milestones & Deliverables to AIA B101-2017.

§ 4.5 **Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

§ 4.5.1 The Modeling protocols shall address the following:

- .1 Identification of the Model Element Authors;
- .2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
- .3 Identification of the required LOD of each Model Element at each identified Project milestone;
- .4 Identification of the construction classification systems to be used on the Project;
- .5 The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
- .6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
- .7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;

Init.

- .8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
- .9 Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.  
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.

**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

#### **§ 4.7 Unauthorized Use**

##### **§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

##### **§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

#### **§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

**Responsible Project Participant**

**Project Milestone**

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- .1 Model origin point, coordinate system, precision, file formats and units. The Model shall be accurately geo-located.
- .2 Model file storage location(s)
- .3 Processes for transferring and accessing Model files
- .4 Naming conventions as defined in the Owner's Revit and Drafting Standards.
- .5 Processes for aggregating Model files from varying software platforms

Init.

- .6 Model access rights
- .7 Identification of design coordination and clash detection procedures.
- .8 Model security requirements
- .9 Other: *(Identify additional Model management protocols to be addressed.)*

The Project Participant responsible for managing the Model shall use the issued MPS Revit template and conform to MPS Revit and Drafting Standards as defined in EXH-C.2 Quality Performance and Owner Provisions of AIA B101-2017.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- .1 Collect incoming Models:
  - .1 Coordinate submission and exchange of Models
  - .2 Create and maintain a log of Models received
  - .3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
  - .4 Maintain a record copy of each Model file received
- .2 Aggregate Model files and make them available for Authorized Uses
- .3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
- .4 Manage Model access rights
- .5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.  
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model                | Applicability to Project<br><i>(Applicable or Not Applicable)</i> | Responsible Project Participant | Location of Detailed Description of Requirements and Services<br><i>(Section 4.10 below or in an attachment to this exhibit and identified below)</i> |
|----------------------------------------|-------------------------------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>§ 4.9.1</b> Remodeling              | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.2</b> Wayfinding and Mapping  | Applicable                                                        | Architect                       |                                                                                                                                                       |
| <b>§ 4.9.3</b> Asset/FF & E Management | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.4</b> Energy Management       | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.5</b> Space Management        | Applicable                                                        | Owner                           |                                                                                                                                                       |
| <b>§ 4.9.6</b> Maintenance Management  | Applicable                                                        | Owner                           |                                                                                                                                                       |
|                                        |                                                                   |                                 |                                                                                                                                                       |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of basic services, the Architect shall produce wayfinding floor plans for use of the Owner. Floor plans shall be provided in PDF format to be printed on letter, 11x17 and 24x36 paper.

#### **ARTICLE 5 OTHER TERMS AND CONDITIONS**

Other terms and conditions related to the transmission and use of Digital Data are as follows:



# Additions and Deletions Report for AIA® Document E203™ – 2013

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 12:15:52 on 03/23/2018.

## PAGE 1

This Exhibit dated the 13 day of March in the year 2018 is incorporated into the agreement (the “Agreement”) between the Parties for the following Project:

## PAGE 4

☒ The Parties intend to use a centralized electronic document management system on the Project.

## PAGE 5

☒ The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Authorized Uses of the Model for the Project are defined in Article 7 of AIA B101-2017.

...

Defined in EXH-B Project Design Milestones & Deliverables to AIA B101-2017.

## PAGE 6

.1 Model origin point, coordinate system, precision, file formats and ~~units~~units. The Model shall be accurately geo-located.

...

.4 Naming conventions as defined in the Owner's Revit and Drafting Standards.

## PAGE 7

The Project Participant responsible for managing the Model shall use the issued MPS Revit template and conform to MPS Revit and Drafting Standards as defined in EXH-C.2 Quality Performance and Owner Provisions of AIA B101-2017.

...

|         |                         |                   |                  |  |
|---------|-------------------------|-------------------|------------------|--|
| § 4.9.1 | Remodeling              | <u>Applicable</u> | <u>Owner</u>     |  |
| § 4.9.2 | Wayfinding and Mapping  | <u>Applicable</u> | <u>Architect</u> |  |
| § 4.9.3 | Asset/FF & E Management | <u>Applicable</u> | <u>Owner</u>     |  |



|         |                        |                   |              |  |
|---------|------------------------|-------------------|--------------|--|
| § 4.9.4 | Energy Management      | <u>Applicable</u> | <u>Owner</u> |  |
| § 4.9.5 | Space Management       | <u>Applicable</u> | <u>Owner</u> |  |
| § 4.9.6 | Maintenance Management | <u>Applicable</u> | <u>Owner</u> |  |

**PAGE 8**

As part of basic services, the Architect shall produce wayfinding floor plans for use of the Owner. Floor plans shall be provided in PDF format to be printed on letter, 11x17 and 24x36 paper.



## **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 12:15:52 on 03/23/2018 under Order No. 8259021829 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ - 2013, Building Information Modeling and Digital Data Exhibit, 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)*

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND**  
**Summit Academy OIC**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Summit Academy OIC dated 2/14/2023 ("Contract") is made and entered into by and between Special School District No.1 ("District") and Summit Academy OIC ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and Summit Academy OIC ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2022 through 6/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001397

1. *Original contract amount:* \$251,812
2. *Accumulative contract amount:* \$308,204.04

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

**Section:** 3.1 Total Obligation District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$308,204.04. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description:** The scope of work by Summit Academy OIC has not changed. The dollar amount of contract is increased to continue the services they are providing for the GED and adult diploma programs.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Dr. Aimee Fearing

Title: Senior Academic Officer

Date: \_\_\_\_\_

**Summit Academy**

Signature: *Marc L. Carrier*

Name: Marc Carrier

Title: CFO

Date: 2/6/2022

**Special School District Number 1  
Board of Education Resolution**



Resolution No. 2023-0018  
February 14, 2023

**Resolution approving MNDOT Safe Routes to School Boost Grant**

**WHEREAS**, the Minnesota Department of Transportation (MnDOT) Safe Routes to School Program assists schools and communities by making it so youth in Minnesota can safely, confidently, and conveniently walk, bike, and roll to school and in daily life; and

**WHEREAS**, the MnDOT Safe Routes to School Program solicits applications to enable school and communities to implement Safe Routes to School planning, implementation, and programmatic activities; and

**WHEREAS**, Minneapolis Public Schools Special School District 1 was awarded Boost funds, these grant funds will be used to provide implementation activities to local communities to develop Safe Routes to School initiatives that increase safety and encourage more children to walk and bicycle to school; and

**WHEREAS**, no local match funding is required; and

**WHEREAS**, SRTS programmatic activities will commence after the grant agreement is fully executed.

**NOW THEREFORE BE IT RESOLVED,**

1. That Minneapolis Public Schools Special School District 1 authorizes the superintendent to enter into a grant agreement with the Minnesota Department of Transportation for financial assistance to fund a Safe Routes to School Boost Grant and eligible expenses, and
2. That the superintendent is authorized to execute such Agreement and any amendments without further approval by the Minneapolis Public Schools Special School District 1 Board of Directors.

ADOPTED this 14th day of February 2023.

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Sharon El-Amin, Chair

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Lori Norvell, Clerk

| <b>RECORD OF BOARD VOTE (2023-0018)</b> |     |     |         |        |
|-----------------------------------------|-----|-----|---------|--------|
| DIRECTOR                                | AYE | NAY | ABSTAIN | ABSENT |
| Abdi                                    |     |     |         |        |
| El-Amin                                 |     |     |         |        |
| Feerayarre                              |     |     |         |        |
| Cerrillo                                |     |     |         |        |
| Norvell                                 |     |     |         |        |
| Jourdain                                |     |     |         |        |
| Beachy                                  |     |     |         |        |
| Ellison                                 |     |     |         |        |
| Emerick                                 |     |     |         |        |



Dear MnDOT Boost Grant Review Team:

With this letter, we express the City's support for the proposal from Minneapolis Public Schools (MPS) for a Safe Routes to School Boost Grant to build an inclusive school-owned bicycle fleet at Edison High School.

The Minneapolis 2040 Comprehensive Plan identifies transportation as a critical component to increasing equity, addressing climate change, reducing carbon emissions, and improving human health. The Transportation Action Plan provides a pathway for achieving this vision and explains that partnerships—including City support for MPS's vision of universal bike education—are critical to achieving the bold mode-shift goals in the plan.

In 2006 Minneapolis Public Schools and the City of Minneapolis began what was a first-of-its-kind Safe Routes to School collaboration between a large city and school district. This partnership has provided fertile ground for Minneapolis to grow into a national leader in Safe Routes to School. The City was part of the teams that developed both the district-wide and Edison High School Safe Routes to School plans, which guide the Minneapolis Public Schools' Boost Grant application for Edison High School. Since Edison completed their Safe Routes to School plan, many of the street infrastructure priorities have been completed and others are planned. The inclusive, school-owned bicycle fleet at Edison will ensure ALL students, including students with disabilities, have access to these improvements through bicycle education and experiences at school.

Support and guidance for this project will come, in part, through the Minneapolis Public Schools Safe Routes to School Work Group. Staff from the Health and Public Works departments are part of this work group, which meet monthly to provide on-going guidance and support for Safe Routes to School work in Minneapolis Public Schools. The City also provides funding through the Statewide Health Improvement Partnership (SHIP) grant for MPS staff to work on Safe Routes to School, specifically supporting school-owned bike fleets and universal bike education. The Health Department is committed to providing future technical assistance and financial support to MPS's safe routes priorities through its SHIP grant. In addition to this, Public Works allocates funds in our Capital Improvement Program (CIP) for Safe Routes to School infrastructure projects aimed at making it safer and easier for students to walk and bike to school.

We look forward to continuing to work with Minneapolis Public Schools, our long-valued partner, on this project. Together we dream of a city where everyone has walking, biking and transits options that will get them where they want to go. We imagine a city where ALL kids have the knowledge, skills, confidence to safely ride a bike on the streets and trails of Minneapolis.

In partnership,

Sincerely,



Jenifer Hager  
Director of Transportation Planning and  
Programming  
City of Minneapolis, Department of Public Works



Heidi Ritchie  
Interim Commissioner of Health  
City of Minneapolis, Health Department



**EDISON**

700 22ND AVENUE MINNEAPOLIS MN 55418 ph 612.668.1300 fax 612.668.1320

**BELONG. BELIEVE. BECOME.**

November 27, 2022

Grant Review Committee  
The Minnesota Department of Transportation  
Safe Routes to School Program  
395 John Ireland Boulevard  
Saint Paul, Minnesota 55155-1899

Dear Grant Review Committee:

I am writing to express my full support for the Minneapolis Public Schools application for the Safe Routes Boost Grant from the Minnesota Department of Transportation (MnDOT). Home to the greenest high school campus in Minnesota, Edison has a goal to increase educational programs that center on health and sustainable living. The proposal to create a unified bike fleet at Edison aligns with this goal and with our Safe Routes to School Plan.

When we completed Safe Routes to School planning in 2019, we had a school-owned bicycle fleet built with donated, used bicycles from Free Bikes for Kidz. This fleet was helpful for us to “learn the ropes” of bicycle safety education with smaller groups of students – several teachers at Edison now have been trained in Walk! Bike! Fun! and have had experiences biking with smaller groups of kids. However, because of the on-going, significant, and disparate maintenance needs of a fleet of older, mismatched bicycles and the lack of adapted bicycles, staff is not able to use these bicycles with full classrooms. A school-owned fleet that includes adaptive bicycles will allow us to bring bike safety education and experiences to every student at our school through our physical education classes. These classes will be the foundation for bike education at Edison, which will be deepened through field trips, after school classes, summer programming, and events using the unified bicycle fleet. This fleet will help us truly address some of the key findings from our Safe Routes to School plan – that students lack bike skills, bike confidence, and access to equipment.

I have confidence in the strong, equity-centered team leading this program at Edison High School: Jessica Braun, Mike Minnema, Billy Menz, Tara Kennedy, and Brian Dean. They have my support. With a richly diverse student body, our vision is that Edison is a place where we **belong** to an inclusive family; **believe** in our ability to make change; and **become** a positive force in our communities and world. We are thankful for the Minnesota Safe Routes to School program, which plays a role in helping us achieve this vision.

Sincerely,

Eryn Warne  
Principal