



# AIA<sup>®</sup> Document B141<sup>™</sup> – 1997 Part 1

## *Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services*

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| **AGREEMENT** the first date on the Attachment signature page is the Agreement date.  
*(In words, indicate day, month and year)*

| **BETWEEN** the Architect's client identified as the Owner: See Attachment  
*(Name, address and other information)*

| and the Architect: See Attachment  
*(Name, address and other information)*

| For the following Project: See Attachment  
*(Include detailed description of Project)*

The Owner and Architect agree as follows:

### ADDITIONS AND DELETIONS:

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

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

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## ARTICLE 1.1 INITIAL INFORMATION

§ 1.1.1 This Agreement is based on the following information and assumptions.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

### § 1.1.2 PROJECT PARAMETERS

§ 1.1.2.1 The objective or use is: see Attachment 1.1.2.1

*(Identify or describe, if appropriate, proposed use or goals.)*

§ 1.1.2.2 The physical parameters are: see Attachment 1.1.2.2

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

§ 1.1.2.3 The Owner's Program is: see Attachment 1.1.2.3

*(Identify documentation or state the manner in which the program will be developed.)*

§ 1.1.2.4 The legal parameters are: see Attachment 1.1.2.4

*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

§ 1.1.2.5 The financial parameters are as follows:

- .1 Amount(s) appropriated by the Legislature for the Project is (are): See Attachment 1.1.2.5.1
- .2 Amount of the Owner's budgeted cost of construction of the Project, which is the amount set aside by the Owner for award of the construction bid, which does not include any other amounts set aside by the Owner (including amounts set aside by the Owner to fund construction change orders), and which is hereinafter referred to as the "Construction Cost" is: see Attachment 1.1.2.5.2.
- .3 Amount of the Owner's Lower Limit-equal to the Construction Cost multiplied by 0.90 is: see Attachment 1.1.2.5.3

§ 1.1.2.6 The time parameters are: This Agreement shall be effective upon the date that the final required signature is obtained by the Owner, or the date of the issuance of the Notice to Proceed, whichever is later and shall remain in effect until all obligations have been satisfactorily fulfilled. Other time parameters are: see Attachment 1.1.2.6

*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

Public, competitive bidding of a single stipulated sum contract for complete construction.

§ 1.1.2.8 Other parameters are:

*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

Project design shall conform to the Owner's Design Standards or approved variance therefrom. The Standards are available on line at the Owner's facilities management web site: [www.facilities.mnscu.edu](http://www.facilities.mnscu.edu) . If, in amending the Design Standards during the term of this Agreement, the Owner creates an additional service requirement for the Architect, the fee for the additional service shall be negotiated.

### § 1.1.3 PROJECT TEAM

§ 1.1.3.1 The Owner's Designated Representative is: the Associate Vice Chancellor for Facilities or Associate Vice Chancellor's designee, or the College/University president or president's designee; see Attachment 1.1.3.1. The Owner's Designated Representative shall be authorized to act on the Owner's behalf with respect to the Project. Architect shall render all services pursuant to this Agreement under the direction of the Owner's Designated Representative or designee. The Owner may also be represented by an Owner's Representative whose duties authorities and responsibilities are contained in this Agreement, the General Conditions of the Contract for Construction (AIA Document A201 – 1997 Edition – Electronic Format, as currently amended by the Owner), and the agreement between the Owner and Owner's Representative.

*(List name, address and other information.)*

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§ 1.1.3.2 The persons or entities, in addition to the Owner's Designated Representative, who will review the Architect's submittals to the Owner are the Owner's consultants and the Owner's Representative.  
(List name, address and other information.)

§ 1.1.3.3 The Owner's other consultants and contractors are: See Attachment 1.1.3.3  
(List discipline and, if known, identify them by name and address.)

§ 1.1.3.4 The Architect's Designated Representative is: Prior to the execution of this Agreement, the Architect shall notify the Owner and the Owner's Representative of the identity of the Architect's Designated Representative. See Attachment 1.1.3.4. The Architect shall further notify the Owner and the Owner's Representative in writing immediately upon any changes in the identity of the Designated Representative. The Owner shall have the authority to approve or disapprove any changes to the Architect's Designated Representative, which approval shall not be unreasonably withheld.  
(List name, address and other information.)

§ 1.1.3.5 The consultants retained at the Architect's expense are all consultants necessary to execute the Architect's responsibilities under this Agreement as to 1) designing all requirements for construction of the Project, and 2) bidding and contract administration. See Attachment 1.1.3.5  
(List discipline and, if known, identify them by name and address.)

Prior to the execution of this Agreement, the Architect shall notify the Owner and the Owner's Representative of the identity of all consultants retained at the Architect's expense. The Architect shall further notify the Owner and Owner's Representative in writing immediately upon any changes in the identity of these consultants or other consultants retained during the term of this Agreement. The Owner shall have authority to approve or disapprove any changes to the firms and specific persons retained by the Architect for the Project, which approval shall not be unreasonably withheld.

§ 1.1.4 Other important initial information is: see Attachment 1.1.4

§ 1.1.5 When the services under this Agreement include contract administration services with the Owner's use of an Owner's Representative, the General Conditions of the Contract for Construction shall be the AIA Document A201 – 1997, Electronic Format as currently amended by the Owner prior to or during the term of this Agreement, and which is incorporated by reference, but solely for the purpose of defining duties and responsibilities of the Architect to the Owner and Owner's Representative. If, in amending the General Conditions of the Contract for Construction during the term of this Agreement, the Owner creates an additional service required from the Architect, the fee for the additional service shall be negotiated. Nothing in this Agreement shall be deemed to create any rights on the part of any person or entity not a party to this Agreement, except that the Architect shall cooperate and work with the Owner's Representative as provided herein, in the AIA Document A201 – 1997, General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner and the agreement between the Owner and the Owner's Representative.

§ 1.1.6 The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

## ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

§ 1.2.1 The Owner, the Owner's Representative and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. All parties shall endeavor to maintain good working relationships among all members of the Project team. When this Agreement calls for the Architect to conform to requirements of any third party, and the Architect is of the opinion that such requirements are internally inconsistent or inconsistent with other obligations of the Architect in this Agreement, the Architect shall present the inconsistency to the Owner for resolution.

### § 1.2.2 OWNER

§ 1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project.

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§ 1.2.2.2 The Owner shall maintain the budget for the Project, and shall consult with the Architect for the need to increase or decrease the Construction Cost.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner may furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. In addition to the above, "tests" include but are not limited to site surveys, soil borings, materials testing, compaction testing, testing pursuant to the International Building Code, and any other non-design consulting services pertaining to the Project.

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

§ 1.2.2.7 The Owner shall provide written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services provided to the Owner by the Architect, Architect's employees and Architect's consultants shall be performed to a level of proficiency consistent with the highest standards of professional skill and care for this type of project in Minnesota, and as enumerated in Article 1.4. The Architect represents that it has or will secure at its own expense all personnel required in the performance of this Agreement within the reasonably foreseeable scope thereof. The Architect further represents that all of the Architect's services required hereunder will be performed by the Architect or under its supervision, that all personnel so engaged shall be fully qualified to perform services required by this Agreement to a level of proficiency consistent with the highest standards of professional skill and care for this type of project in Minnesota, and, as applicable, that all personnel so engaged shall be authorized under state or local law to perform such services.

§ 1.2.3.2 The Architect's services shall meet the criteria as set forth in this Agreement and shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall deliver to the Owner for review as follows: Schematic Design shall be delivered for review no later than XX calendar days following authorization to proceed with Schematic Design; Design Development shall be delivered for review no later than XX calendar days following authorization to proceed with the Design Development; Construction Documents shall be delivered for review no later than XX calendar days following authorization to proceed with Construction Documents; see Attachment 1.1.2.6. The Architect shall submit for the Owner's Representative's review and the Owner's acceptance a schedule for the performance of the Architect's services which shall be consistent with the time periods established in Subparagraph 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's and Owner's Representative's review, for the performance of the Owner's consultants, and for approval by authorities having jurisdiction over the Project. This schedule when accepted by the Owner, shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

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

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

*(Paragraph deleted)*

§ 1.2.3.6 The Architect and Architect's consultants shall review laws, codes, and regulations applicable to their respective services. The Architect and Architect's consultants shall conform in the design of the Project to all requirements imposed by governmental authorities having jurisdiction over the Project, including but not limited to the State Building Code. The Architect shall be directly responsible to the Owner for the review and conformance by the Architect's consultants that are required by this provision.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

1.2.3.8 The Architect shall provide prompt notice to the Owner and the Owner's Representative whenever the Architect becomes aware of a design defect or deficiency in the Project.

1.2.3.9 The books, records, documents, and accounting procedures and practices of the Architect relevant to this Agreement shall be subject to examination by the Owner and the Legislative Auditor at mutually convenient times. These times shall be no later than thirty calendar days after the Owner's written request is delivered to the Architect. Such records shall remain available to the Owner for at least three years after completion of the Project.

1.2.3.10 The Architect shall include in the construction specification all test specifications and a table listing all the tests in the approximate order in which they will be done. The Owner shall contract and pay for all tests, which shall be performed and reported by qualified independent testing companies. Tests shall not be contracted for or conducted by the Architect. The Architect shall coordinate all tests with the testing companies and, through this coordination, shall work to see that each test required by the construction specification is completed at the earliest possible time. Information and opinions provided by the tests shall be applied and utilized by the Architect in rendering the services provided herein. All judgments and recommendations by the Architect based on the information and opinions provided by the tests shall be the responsibility of the Architect.

1.2.3.11 The Architect shall by prompt written report disclose to the Owner and Owner's Representative all material changes concerning design trade-offs, such as architectural/mechanical trade-offs.

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

## ARTICLE 1.3 TERMS AND CONDITIONS

### § 1.3.1 COST OF THE WORK

#### § 1.3.1.1

#### § 1.3.1.2

#### § 1.3.1.3

### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service and the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain ownership of all common law, statutory and other reserved rights, including copyrights. The Owner shall jointly own all rights, title and interest in all of the Instruments of Service and all of the other materials conceived or created by the Architect, or its employees or consultants, either individually or jointly with others and which arise out of the performance of this Agreement, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form (hereafter "MATERIALS"). All finished or unfinished MATERIALS prepared by the

Architect under this Agreement shall be the joint property of the Owner whether or not the Project is completed or this Agreement is canceled prior to expiration.

The Architect shall, upon request of the Owner, execute all papers and perform all other acts necessary to assist the Owner to obtain and register copyrights, patents or other forms of protection provided by law for the MATERIALS to the extent necessary to protect the Owner's interest in the MATERIALS. Copies of all of the MATERIALS, whether in paper, electronic, or other form, shall be remitted to the Owner by the Architect, its employees and any consultants, and the Architect shall not copy, reproduce, allow or cause to have the MATERIALS copied, reproduced or used for any purpose other than performance of the Architect's obligations under this Agreement without the prior written consent of the Owner's Designated Representative.

The foregoing shall not be construed to mean that the Owner shall acquire an exclusive possessory right, by copyright or otherwise, to the exclusion of the Architect, in standard elements found in the MATERIALS (such as standard details) generated and authored by the Architect for its regular, repeated and ongoing use in designs, plans and drawings for its customers in the regular course of its business. However, if the Owner, prior to the Architect's signing of this Agreement, provides written notice to the Architect that the Owner considers the design of the Project to be a signature design unique to the Project, then the Architect shall not substantially replicate the design of the Project on any other project without the written consent of the Owner. The Owner further waives any claim it might have against the Architect for errors or omissions arising specifically from changes made by the Owner or others to the MATERIALS after the completion or termination of the work provided by this Agreement. This waiver does not extend to errors or omissions in the MATERIALS unrelated to any such changes by the Owner or others.

The Architect represents and believes that MATERIALS produced or used under this Agreement do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. The Architect shall indemnify and defend the Owner at the Architect's expense from any action or claim brought against the Owner to the extent that it is based on a claim that all or part of the MATERIALS infringe upon the intellectual property rights of another. The Architect shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of this Agreement, amendments and supplements thereto, which are attributed to such claims or actions. This paragraph shall not apply to claims that arise from MATERIALS specifically required by the Owner, or to portions of the MATERIALS which the Owner directed the Architect to include within said MATERIALS.

If such a claim or action arises, or in the Architect's or the Owner's opinion is likely to arise, the Architect shall, at the Owner's discretion, either procure for the Owner the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

#### § 1.3.2.2

#### § 1.3.2.3

#### § 1.3.2.4

### § 1.3.3 CHANGE IN SERVICES

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if approved in advance by the Owner and if mutually agreed in writing, by supplemental agreement. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5. Architectural services rendered and expenses incurred, in whole or in part, to correct an error or omission of the Architect shall not be compensated or reimbursed by the Owner.

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

- .1 material change in the instructions or acceptances/approvals given by the Owner that necessitate revisions in the Instruments of Service;

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

**§ 1.3.4 MEDIATION**

§ 1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement may with the consent of the parties be subject to mediation.

**§ 1.3.4.2**

**§ 1.3.4.3**

**§ 1.3.5 ARBITRATION**

**§ 1.3.5.1.**

*(Paragraph deleted)*

**§ 1.3.5.2**

**§ 1.3.5.3**

**§ 1.3.5.4**

**§ 1.3.5.5**

**§ 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

**§ 1.3.7 MISCELLANEOUS PROVISIONS**

§ 1.3.7.1 This Agreement shall be governed by the laws of the State of Minnesota. All legal or equitable proceedings, controversies or disputes arising from this Agreement shall be venued in the District Court of Ramsey County, Minnesota.

**§ 1.3.7.2**

**§ 1.3.7.3**

**§ 1.3.7.4**

§ 1.3.7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect, except that the Architect shall cooperate and work with the Owner's Representative as provided herein, in AIA Document A201 - 1997, General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner and in the agreement between the Owner and Owner's Representative.

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

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner may provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 1.3.7.8 If the Owner requests the Architect to execute certificates regarding special circumstances, the handling of which is not already provided for herein, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 1.3.7.9 The Architect binds itself jointly and severally, its successors, executors, administrators and assigns to the Owner in respect to all covenants of this Agreement. It shall not assign, sublet or transfer any rights or obligations under this Agreement without the prior written consent of the Owner.

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

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

1.3.7.12 The Architect must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the Owner in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Architect in accordance with this Agreement. The civil remedies of Minnesota Statutes Section 13.08, apply to the release of the data referred to in this Article by either the Architect or the Owner. In the event the Architect receives a request to release the data referred to in this Subparagraph 1.3.7.12, the Architect must immediately notify the Owner. The Owner will give the Architect instructions concerning the release of the data to the requesting party before the data is released.

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

1.3.7.14 Project Management Software: The Owner may, at its sole option, direct the Architect and/or other Project participants to utilize the Owner's internet-based Project Management Software. The functionality of this software may include, but is not limited to, the processing of Plan Reviews, Purchase Orders, Change Orders, Invoice, Payment Applications, Requests for Information, and Document Management related to the Project. If the Owner chooses to utilize its Project Management Software for the Project, the Owner will provide and manage a login license for the Architect's designated Project representative(s) at no cost to the Architect. The Owner will provide initial software training to the Architect's designated Project representative(s) at no cost to the Architect. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of this software by the Architect.

## § 1.3.8 TERMINATION OR SUSPENSION

### § 1.3.8.1

§ 1.3.8.2 At any time during the term of the Agreement, the Owner may terminate the Project entirely or suspend it for an indefinite period of time upon seven days written notice to the Architect. If the Project is terminated or suspended by the Owner, the Architect shall be compensated in accordance with Paragraph 1.3.8.6 and then only for services performed prior to notice of such termination or suspension. If the Project is resumed, the Architect's fees for the remaining services and reimbursement for expenses incurred to resume the Project shall be negotiated.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses incurred prior to termination and all mutually agreed termination expenses .

§ 1.3.8.7

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

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

§ 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 If an Owner's Representative is used, payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services to the Owner's Representative, review by the Owner's Representative, and upon recommendation by the Owner's Representative, acceptance of such services by the Owner. Acceptance of services by the Owner shall not be unreasonably withheld. If an Owner's Representative is not used, presentation of the Architect's Statement shall be made directly to the Owner.

Each such statement shall be in writing, in a form acceptable to the Owner, and explain in reasonable detail the basis therefore, refer to the Owner's purchase order number, and be certified as true and correct by a principal or officer of the Architect. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable. No payment shall be made to the Architect for services which do not meet the conditions stipulated herein, or performed in violation of federal, state or local law, ordinance, rule or regulation.

§ 1.3.9.2 Payments on account of Reimbursable Expenses are in addition to compensation for the Architect's services and include only certain expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as described in Clauses 1.3.9.2.9. The Architect shall provide complete documentation, including copies of all invoices paid by the Architect, for those expenses which are to be reimbursed.

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.9 at cost for printing, postage, courier fees, long distance and cellular telephone, long distance fax transmissions, advertisements for bids, mylars, and specialty subconsultants requested by the Owner; mileage reimbursement at the State rate, and other expenses by negotiation between the Owner and the Architect. See Attachment 1.3.9.2.9. If the Architect does its own printing, reimbursement shall be at the following rates: See Attachment 1.3.9.2.9.

§ 1.3.9.3 Records of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

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

1.3.9.5 Total reimbursement shall not exceed: see Attachment 1.3.9.5

#### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§ 1.4.1 Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services, AIA Document B141-1997 – Electronic Format as currently amended by the Owner including Attachments.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997 - Electronic Format as currently amended by the Owner including Attachments.  
(List other documents, if any, delineating Architect's scope of services.)

§ 1.4.1.3 Other documents as follows:  
(List other documents, if any, forming part of the Agreement.)

(a) AIA Document A201- 1997, General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner.

(b) Agreement between Owner and Owner's Representative.

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

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

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

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

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

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

At the time of signing this Agreement the Architect shall provide to the Owner certificates of insurance in accordance with the requirements of this Paragraph 1.4.2.1. The Architect shall pay the insurance premiums.

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

- a. Coverage B. Employers Liability including Stop Gap Liability for monopolistic states, at limits of not less than \$100,000 bodily injury by disease per employee; \$500,000 bodily injury by disease aggregate; and \$100,000 bodily injury by accident.
- b. Coverage C. All States coverage.
- c. If applicable, USL&H, Maritime Voluntary, and Foreign coverage.
- d. A waiver of subrogation in favor of the Owner.

At the time of signing this Agreement the Architect shall provide to the Owner certificates of insurance in accordance with the requirements of this Paragraph 1.4.2.2. The Architect shall pay the insurance premiums.

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

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

The following coverage shall be included:

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

The Architect shall name the Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota as Additional Insureds, but only with respect to claims arising out of the Architect's negligence or for the negligence of those for whom the Architect is responsible, by endorsement, ISO Forms CG 20 10 and CG 20 37 or their equivalent.

At the time of signing this Agreement, the Architect shall provide to the Owner certificates of insurance in accordance with the requirements of this Paragraph 1.4.2.3. The Architect shall pay the insurance premiums.

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

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

The following coverages shall be included:

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

The Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota, the Architect and its agents shall be named as Additional Insureds, by endorsement, ISO Form CA 20 48 or its equivalent, for claims arising out of the Architect's negligence or the negligence of those for whom the Architect is responsible.

At the time of signing this Agreement, the Architect shall provide to the Owner certificates of insurance in accordance with the requirements of this Paragraph 1.4.2.4. The Architect shall pay the insurance premiums.

#### 1.4.2.5 Additional Insurance Conditions:

The Architect's policy(ies) shall be the primary and non-contributory to any other valid and collectible insurance available to the State of Minnesota and the Board of Trustees of the Minnesota State Colleges and Universities, to include the Project's College or University, with respect to any claim arising out of this Agreement.

The Architect is responsible for payment of insurance deductibles.

Insurance companies providing coverage as outlined in Paragraph 1.4.2 must have an "AM Best" rating of A – (minus) and a Financial Size Category of Class VII or better, and be authorized to do business in the state of Minnesota.

Insurance companies for all policies shall waive the right to assert immunity of the Owner as a defense to any claims made and endorsements to policies or the certificate shall indicate this waiver.

The above establishes minimum insurance requirements. It is the sole responsibility of the Architect to determine the need for and to procure additional insurance that may be needed in connection with this Agreement.

Certificates of Insurance acceptable to the Owner shall be submitted prior to commencement of the work under this Agreement. Such Certificates and the insurance policies shall contain a provision that coverage afforded under these policies shall not be cancelled without at least thirty (30) days advanced written notice to the Owner.

A full-certified copy of any policy and endorsements obtained by the Architect as required above, may be requested by the Owner at any time.

The failure of the Owner to obtain Certificate(s) of Insurance, for the policy(ies) required under Paragraph 1.4.2 or renewals thereof, shall not constitute a waiver by the Owner to the Architect to provide such insurance.

#### 1.4.2.6 The Architect shall maintain all insurance in force and effect throughout the term of the Agreement.

#### 1.4.2.7 If the Architect is self-insured, a certificate of self-insurance must be attached.

1.4.2.8 Waivers of Subrogation: To the extent that loss or damage to property, materials, supplies and equipment is covered by insurance pursuant to the provisions of AIA Document A201 – 1997, the General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner Paragraph 11.3, the Architect and the Architect's consultants and sub-consultants of all tiers, and the Owner and the Owner's consultants of all tiers waive all rights against each other and against the Contractor and the Contractor's subcontractors of all tiers for loss or damage to said property, materials, supplies and equipment.

§ 1.4.2.9. The Architect agrees that during the term of this Agreement it will comply with the provisions of Minnesota Statutes Chapter 363 relative to nondiscrimination.

§ 1.4.2.10 Minnesota Statutes 363.073 provides that for all contracts estimated to be in excess of \$100,000, all respondents having more than 40 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a contract may be accepted. This Agreement will not be accepted unless it includes one of the following:

a) A copy of the Architect's current certificate of compliance issued by the Commissioner of Human Rights; or

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

§ 1.4.2.11. In the event the Architect engages any consultant to perform any of the services under this Agreement, the Architect shall pay any such consultant within thirty (30) days of the Architect's receipt of payment from the Owner for undisputed services provided by the consultant. The Architect shall pay interest of 1-1/2 percent per month (or any part of a month) to the consultant on an undisputed amount not paid on time to the consultant. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Architect shall pay the actual penalty due to the consultant. See Minn. Stat. Sec. 137.36.

§ 1.4.2.12 Architect is required to have a State of Minnesota vendor number so that either its social security number or its federal employer identification number and its Minnesota tax identification number are available to the Owner. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations, and may be used in the enforcement of federal and state tax laws which could result in action to require the Architect to file tax return(s) and to pay delinquent tax liabilities.

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

**ARTICLE 1.5 COMPENSATION**

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be as follows:

1.5.1.1 The Architect's total fee is: see Attachment 1.5.1.1. Upon completion and acceptance by the Owner of the various Project phases, the Architect shall be entitled to payment of a portion of this fee in accordance with the following or otherwise negotiated schedule:

a)	Schematic Design Phase	Twenty percent	(20%)
b)	Design Development Phase	Twenty-five percent	(25%)
c)	Construction Documents Phase	Thirty percent	(30%)
d)	Bidding Phase	Five percent	(5%)
e)	Construction Phase	Twenty percent	(20%)
	<b>TOTAL</b>	<b>One hundred percent</b>	<b>(100%)</b>

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

1.5.1.2 The Architect shall not receive any additional fee for redesign and rebidding work if rebidding is required pursuant to Subparagraphs 2.1.7.5 and 2.1.7.6.

1.5.1.3 For the purposes of this Article 1.5 only, construction contract Change Orders shall be divided into two groups: (1) Change Orders resulting solely from change in Project Scope (hereinafter called "Scope Change Orders") and (2) all other Change Orders (hereinafter called "Other Change Orders"). Concerning additional fees for services pertaining to construction contract Change Orders, the Architect shall receive additional fees only for services pertaining to Scope Change Orders and then only if either of the following conditions exist:

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

Under no circumstances shall the Architect receive any additional fees for any work pertaining to Other Change Orders.

Architect fees permitted by this Subparagraph 1.5.1.3 shall be negotiated.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be negotiated. All additional services will be authorized by written supplement to this Agreement. *(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of one (1.0) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of one (1.0) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

None. See Paragraph 1.3.9.2.

§ 1.5.6 § 1.5.7

§ 1.5.8 . Payments by the Owner to the Architect shall comply with the requirements of Minnesota Statutes 16A.124, subdivisions 3, 4, 5 and 8.

*(Insert rate of interest agreed upon.)*

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 1.5.9

1.6 The signature lines below are deleted. The signatures of the parties on the signature lines of the Attachment (see Attachment 2.10.) bind those parties to both the Standard Form of Agreement Between Owner and Architect, with Standard Form of Architect's Services, AIA Document B141-1997 Part 1, Electronic Format as currently amended by the Owner (Articles 1.1 through 1.6), and Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997 Part 2, Electronic Format as currently amended by the Owner (Articles 2.1 through 2.10), attached hereto and made a part hereof. The signatures of the parties on the signature lines of the Attachment shall create the Agreement of the parties as to both Articles 1.1 through 1.6 and Articles 2.1 through 2.10.

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

The preceding sentence notwithstanding, this Agreement shall be effective upon the date that the final required signature is obtained by the Owner.

**OWNER**

**Go to Attachment signature line**

*(Signature)*

**Go to Attachment name/title lines**

*(Printed name and title)*

**ARCHITECT**

**Go to Attachment signature line**

*(Signature)*

**Go to Attachment name/title lines**

*(Printed name and title)*

Init.

# Additions and Deletions Report for AIA<sup>®</sup> Document B141<sup>™</sup> – 1997 Part 1

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 10:01:44 on 05/19/2009.

## PAGE 1

**AGREEMENT** ~~made as of the~~ day of ~~in the year~~ the first date on the Attachment signature page is the Agreement date.

...

**BETWEEN** the Architect's client identified as the Owner: See Attachment

...

and the Architect: See Attachment

...

For the following Project: See Attachment

## PAGE 2

§ 1.1.2.1 The objective or use is: see Attachment 1.1.2.1

...

§ 1.1.2.2 The physical parameters are: see Attachment 1.1.2.2

...

§ 1.1.2.3 The Owner's Program is: see Attachment 1.1.2.3

...

§ 1.1.2.4 The legal parameters are: see Attachment 1.1.2.4

...

§ 1.1.2.5 The financial parameters are as ~~follows~~ follows:

- ~~.1~~ Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:
- ~~.2~~ Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:  
Amount(s) appropriated by the Legislature for the Project is (are): See Attachment 1.1.2.5.1
- ~~.2~~ Amount of the Owner's budgeted cost of construction of the Project, which is the amount set aside by the Owner for award of the construction bid, which does not include any other amounts set aside by the Owner (including amounts set aside by the Owner to fund construction change orders), and which is hereinafter referred to as the "Construction Cost" is: see Attachment 1.1.2.5.2.

.3 Amount of the Owner's Lower Limit-equal to the Construction Cost multiplied by 0.90 is: see Attachment 1.1.2.5.3

§ 1.1.2.6 The time parameters are: This Agreement shall be effective upon the date that the final required signature is obtained by the Owner, or the date of the issuance of the Notice to Proceed, whichever is later and shall remain in effect until all obligations have been satisfactorily fulfilled. Other time parameters are: see Attachment 1.1.2.6

...

Public, competitive bidding of a single stipulated sum contract for complete construction.

...

Project design shall conform to the Owner's Design Standards or approved variance therefrom. The Standards are available on line at the Owner's facilities management web site: [www.facilities.mnscu.edu](http://www.facilities.mnscu.edu) . If, in amending the Design Standards during the term of this Agreement, the Owner creates an additional service requirement for the Architect, the fee for the additional service shall be negotiated.

...

§ 1.1.3.1 The Owner's Designated Representative is: the Associate Vice Chancellor for Facilities or Associate Vice Chancellor's designee, or the College/University president or president's designee; see Attachment 1.1.3.1. The Owner's Designated Representative shall be authorized to act on the Owner's behalf with respect to the Project. Architect shall render all services pursuant to this Agreement under the direction of the Owner's Designated Representative or designee. The Owner may also be represented by an Owner's Representative whose duties authorities and responsibilities are contained in this Agreement, the General Conditions of the Contract for Construction (AIA Document A201 – 1997 Edition – Electronic Format, as currently amended by the Owner), and the agreement between the Owner and Owner's Representative.

### PAGE 3

§ 1.1.3.2 The persons or entities, in addition to the Owner's Designated Representative, who ~~are required to will~~ review the Architect's submittals to the Owner ~~are:~~ are the Owner's consultants and the Owner's Representative.

...

§ 1.1.3.3 The Owner's other consultants and contractors are: See Attachment 1.1.3.3

...

§ 1.1.3.4 The Architect's Designated Representative is: Prior to the execution of this Agreement, the Architect shall notify the Owner and the Owner's Representative of the identity of the Architect's Designated Representative. See Attachment 1.1.3.4. The Architect shall further notify the Owner and the Owner's Representative in writing immediately upon any changes in the identity of the Designated Representative. The Owner shall have the authority to approve or disapprove any changes to the Architect's Designated Representative, which approval shall not be unreasonably withheld.

...

§ 1.1.3.5 The consultants retained at the Architect's expense ~~are:~~ are all consultants necessary to execute the Architect's responsibilities under this Agreement as to 1) designing all requirements for construction of the Project, and 2) bidding and contract administration. See Attachment 1.1.3.5

...

Prior to the execution of this Agreement, the Architect shall notify the Owner and the Owner's Representative of the identity of all consultants retained at the Architect's expense. The Architect shall further notify the Owner and

Owner's Representative in writing immediately upon any changes in the identity of these consultants or other consultants retained during the term of this Agreement. The Owner shall have authority to approve or disapprove any changes to the firms and specific persons retained by the Architect for the Project, which approval shall not be unreasonably withheld.

§ 1.1.4 Other important initial information is: see Attachment 1.1.4

§ 1.1.5 When the services under this Agreement include contract administration ~~services,~~ services with the Owner's use of an Owner's Representative, the General Conditions of the Contract for Construction shall be the ~~edition of AIA Document A201 current as of the date of this Agreement,~~ or as follows:

AIA Document A201 – 1997, Electronic Format as currently amended by the Owner prior to or during the term of this Agreement, and which is incorporated by reference, but solely for the purpose of defining duties and responsibilities of the Architect to the Owner and Owner's Representative. If, in amending the General Conditions of the Contract for Construction during the term of this Agreement, the Owner creates an additional service required from the Architect, the fee for the additional service shall be negotiated. Nothing in this Agreement shall be deemed to create any rights on the part of any person or entity not a party to this Agreement, except that the Architect shall cooperate and work with the Owner's Representative as provided herein, in the AIA Document A201 – 1997, General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner and the agreement between the Owner and the Owner's Representative.

...

§ 1.2.1 ~~The Owner~~ Owner, the Owner's Representative and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. ~~Both~~ All parties shall endeavor to maintain good working relationships among all members of the Project team. When this Agreement calls for the Architect to conform to requirements of any third party, and the Architect is of the opinion that such requirements are internally inconsistent or inconsistent with other obligations of the Architect in this Agreement, the Architect shall present the inconsistency to the Owner for resolution.

...

§ 1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. ~~The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.~~

§ 1.2.2.2 The Owner shall ~~periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.~~ maintain the budget for the Project, and shall consult with the Architect for the need to increase or decrease the Construction Cost.

#### PAGE 4

§ 1.2.2.4 The Owner ~~shall~~ may furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. In addition to the above, "tests" include but are not limited to site surveys, soil borings, materials testing, compaction testing, testing pursuant to the International Building Code, and any other non-design consulting services pertaining to the Project.

...

§ 1.2.2.7 The Owner shall provide ~~prompt~~ written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

...

§ 1.2.3.1 The services ~~performed~~ provided to the Owner by the Architect, Architect's employees and Architect's consultants shall be performed to a level of proficiency consistent with the highest standards of professional skill and care for this type of project in Minnesota, and as enumerated in Article 1.4. The Architect represents that it has or will secure at its own expense all personnel required in the performance of this Agreement within the reasonably foreseeable scope thereof. The Architect further represents that all of the Architect's services required hereunder will be performed by the Architect or under its supervision, that all personnel so engaged shall be fully qualified to perform services required by this Agreement to a level of proficiency consistent with the highest standards of professional skill and care for this type of project in Minnesota, and, as applicable, that all personnel so engaged shall be authorized under state or local law to perform such services.

§ 1.2.3.2 The Architect's services shall meet the criteria as set forth in this Agreement and shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval. The Architect shall deliver to the Owner for review as follows: Schematic Design shall be delivered for review no later than XX calendar days following authorization to proceed with Schematic Design; Design Development shall be delivered for review no later than XX calendar days following authorization to proceed with the Design Development; Construction Documents shall be delivered for review no later than XX calendar days following authorization to proceed with Construction Documents; see Attachment 1.1.2.6. The Architect shall submit for the Owner's Representative's review and the Owner's acceptance a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section Subparagraph 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's and Owner's Representative's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner. This schedule when accepted by the Owner, shall not, except for reasonable cause, be exceeded by the Architect or Owner.

PAGE 5

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

~~§ 1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.~~

§ 1.2.3.6 The Architect and Architect's consultants shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond their respective services. The Architect and Architect's consultants shall conform in the design of the Project to all requirements imposed by governmental authorities having jurisdiction over the Project, the Project, including but not limited to the State Building Code. The Architect shall be directly responsible to the Owner for the review and conformance by the Architect's consultants that are required by this provision.

...

1.2.3.8 The Architect shall provide prompt notice to the Owner and the Owner's Representative whenever the Architect becomes aware of a design defect or deficiency in the Project.

1.2.3.9 The books, records, documents, and accounting procedures and practices of the Architect relevant to this Agreement shall be subject to examination by the Owner and the Legislative Auditor at mutually convenient times. These times shall be no later than thirty calendar days after the Owner's written request is delivered to the Architect. Such records shall remain available to the Owner for at least three years after completion of the Project.

1.2.3.10 The Architect shall include in the construction specification all test specifications and a table listing all the tests in the approximate order in which they will be done. The Owner shall contract and pay for all tests, which shall be performed and reported by qualified independent testing companies. Tests shall not be contracted for or conducted by the Architect. The Architect shall coordinate all tests with the testing companies and, through this coordination, shall work to see that each test required by the construction specification is completed at the earliest possible time. Information and opinions provided by the tests shall be applied and utilized by the Architect in rendering the services provided herein. All judgments and recommendations by the Architect based on the information and opinions provided by the tests shall be the responsibility of the Architect.

1.2.3.11 The Architect shall by prompt written report disclose to the Owner and Owner's Representative all material changes concerning design trade-offs, such as architectural/mechanical trade-offs.

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

...

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights of way and financing or other costs that are the responsibility of the Owner.

...

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. ~~The and the~~ Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain ownership of all common law, statutory and other reserved rights, including copyrights. The Owner shall jointly own all rights, title and interest in all of the Instruments of Service and all of the other materials conceived or created by the Architect, or its employees or consultants, either individually or jointly with others and which arise out of the performance of this Agreement, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form (hereafter "MATERIALS"). All finished or unfinished MATERIALS prepared by the Architect under this Agreement shall be the joint property of the Owner whether or not the Project is completed or this Agreement is canceled prior to expiration.

The Architect shall, upon request of the Owner, execute all papers and perform all other acts necessary to assist the Owner to obtain and register copyrights, patents or other forms of protection provided by law for the MATERIALS to the extent necessary to protect the Owner's interest in the MATERIALS. Copies of all of the MATERIALS, whether in paper, electronic, or other form, shall be remitted to the Owner by the Architect, its employees and any consultants, and the Architect shall not copy, reproduce, allow or cause to have the MATERIALS copied, reproduced or used for any purpose other than performance of the Architect's obligations under this Agreement without the prior written consent of the Owner's Designated Representative.

The foregoing shall not be construed to mean that the Owner shall acquire an exclusive possessory right, by copyright

or otherwise, to the exclusion of the Architect, in standard elements found in the MATERIALS (such as standard details) generated and authored by the Architect for its regular, repeated and ongoing use in designs, plans and drawings for its customers in the regular course of its business. However, if the Owner, prior to the Architect's signing of this Agreement, provides written notice to the Architect that the Owner considers the design of the Project to be a signature design unique to the Project, then the Architect shall not substantially replicate the design of the Project on any other project without the written consent of the Owner. The Owner further waives any claim it might have against the Architect for errors or omissions arising specifically from changes made by the Owner or others to the MATERIALS after the completion or termination of the work provided by this Agreement. This waiver does not extend to errors or omissions in the MATERIALS unrelated to any such changes by the Owner or others.

The Architect represents and believes that MATERIALS produced or used under this Agreement do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. The Architect shall indemnify and defend the Owner at the Architect's expense from any action or claim brought against the Owner to the extent that it is based on a claim that all or part of the MATERIALS infringe upon the intellectual property rights of another. The Architect shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of this Agreement, amendments and supplements thereto, which are attributed to such claims or actions. This paragraph shall not apply to claims that arise from MATERIALS specifically required by the Owner, or to portions of the MATERIALS which the Owner directed the Architect to include within said MATERIALS.

If such a claim or action arises, or in the Architect's or the Owner's opinion is likely to arise, the Architect shall, at the Owner's discretion, either procure for the Owner the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect’s consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if ~~mutually agreed in writing, if required by circumstances beyond the Architect’s control, or if the Architect’s services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services.~~ approved in advance by the Owner and if mutually agreed in writing, by supplemental agreement. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5. Architectural services rendered and expenses incurred, in whole or in part, to correct an error or omission of the Architect shall not be compensated or reimbursed by the Owner.

...

- .1 ~~material change in the instructions or approvals~~ acceptances/approvals given by the Owner that necessitate revisions in the Instruments of Service;
- .2 post Agreement enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service; Service and which could not reasonably have been foreseen;
- .3 decisions of the Owner not rendered in a timely ~~manner;~~ manner that impact the cost of the Architect’s performance;

- .5 material failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .6 material preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 material change in the information contained in Article 1.1.

...

§ 1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement ~~shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect’s services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.~~ may with the consent of the parties be subject to mediation.

§ 1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.

§ 1.3.4.3 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

...

§ 1.3.5.1.

~~§ 1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.~~

~~§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.~~

~~§ 1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.~~

~~§ 1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. 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 or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 1.3.5.5 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.~~

...

~~The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.~~

...

~~§ 1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2, laws of the State of Minnesota. All legal or equitable proceedings, controversies or disputes arising from this Agreement shall be venued in the District Court of Ramsey County, Minnesota.~~

~~§ 1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.~~

~~§ 1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.~~

~~§ 1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.~~

§ 1.3.7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. Architect, except that the Architect shall cooperate and work with the Owner's Representative as provided herein, in AIA Document A201 - 1997, General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner and in the agreement between the Owner and Owner's Representative.

...

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall may provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 1.3.7.8 If the Owner requests the Architect to execute ~~certificates~~, certificates regarding special circumstances, the handling of which is not already provided for herein, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment. Architect binds itself jointly and severally, its successors, executors, administrators and assigns to the Owner in respect to all covenants of this Agreement. It shall not assign, sublet or transfer any rights or obligations under this Agreement without the prior written consent of the Owner.

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

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

1.3.7.12 The Architect must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the Owner in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Architect in accordance with this Agreement. The civil remedies of Minnesota Statutes Section 13.08, apply to the release of the data referred to in this Article by either the Architect or the Owner. In the event the Architect receives a request to release the data referred to in this Subparagraph 1.3.7.12, the Architect must immediately notify the Owner. The Owner will give the Architect instructions concerning the release of the data to the requesting party before the data is released.

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

1.3.7.14 Project Management Software: The Owner may, at its sole option, direct the Architect and/or other Project participants to utilize the Owner's internet-based Project Management Software. The functionality of this software may include, but is not limited to, the processing of Plan Reviews, Purchase Orders, Change Orders, Invoice, Payment Applications, Requests for Information, and Document Management related to the Project. If the Owner chooses to utilize its Project Management Software for the Project, the Owner will provide and manage a login license for the

Architect's designated Project representative(s) at no cost to the Architect. The Owner will provide initial software training to the Architect's designated Project representative(s) at no cost to the Architect. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of this software by the Architect.

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§ 1.3.8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated. At any time during the term of the Agreement, the Owner may terminate the Project entirely or suspend it for an indefinite period of time upon seven days written notice to the Architect. If the Project is terminated or suspended by the Owner, the Architect shall be compensated in accordance with Paragraph 1.3.8.6 and then only for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's termination or suspension. If the Project is resumed, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted. reimbursement for expenses incurred to resume the Project shall be negotiated.

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§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7 incurred prior to termination and all mutually agreed termination expenses.

§ 1.3.8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

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

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

...

§ 1.3.9.1 Payments If an Owner's Representative is used, payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. of services to the Owner's Representative, review by the Owner's Representative, and upon recommendation by the Owner's Representative, acceptance of such services by the Owner. Acceptance of services by the Owner shall not be unreasonably withheld. If an Owner's Representative is not used, presentation of the Architect's Statement shall be made directly to the Owner. Each such statement shall be in writing, in a form acceptable to the Owner, and explain in reasonable detail the basis therefore, refer to the Owner's purchase order number, and be certified as true and correct by a principal or officer of the Architect. No deductions shall be made from the Architect's compensation on account

of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable. No payment shall be made to the Architect for services which do not meet the conditions stipulated herein, or performed in violation of federal, state or local law, ordinance, rule or regulation.

**§ 1.3.9.2** Payments on account of Reimbursable Expenses are in addition to compensation for the Architect's services and include only certain expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as ~~identified in the following Clauses:~~ described in Clauses 1.3.9.2.9. The Architect shall provide complete documentation, including copies of all invoices paid by the Architect, for those expenses which are to be reimbursed.

- ~~.1 transportation in connection with the Project, authorized out of town travel and subsistence, and electronic communications;~~
- ~~.2 fees paid for securing approval of authorities having jurisdiction over the Project;~~
- ~~.3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;~~
- ~~.4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;~~
- ~~.5 renderings, models and mock ups requested by the Owner;~~
- ~~.6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;~~
- ~~.7 reimbursable expenses as designated in Section 1.5.5;~~
- ~~.8 other similar direct Project-related expenditures.~~
- .9 at cost for printing, postage, courier fees, long distance and cellular telephone, long distance fax transmissions, advertisements for bids, mylars, and specialty subconsultants requested by the Owner; mileage reimbursement at the State rate, and other expenses by negotiation between the Owner and the Architect. See Attachment 1.3.9.2.9. If the Architect does its own printing, reimbursement shall be at the following rates: See Attachment 1.3.9.2.9.

**§ 1.3.9.3** Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

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1.3.9.5 Total reimbursement shall not exceed: see Attachment 1.3.9.5

...

**§ 1.4.1.1** Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997, Architect with Standard Form of Architect's Services, AIA Document B141-1997 – Electronic Format as currently amended by the Owner including Attachments.

**§ 1.4.1.2** Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows: B141-1997 - Electronic Format as currently amended by the Owner including Attachments.

...

(a) AIA Document A201- 1997, General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner.

(b) Agreement between Owner and Owner's Representative.

...

**§ 1.4.2.1** If the Architect provides design-related services in the performance of this Agreement, the Architect shall

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

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

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

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

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

At the time of signing this Agreement the Architect shall provide to the Owner certificates of insurance in accordance with the requirements of this Paragraph 1.4.2.1. The Architect shall pay the insurance premiums.

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

- a. Coverage B. Employers Liability including Stop Gap Liability for monopolistic states, at limits of not less than \$100,000 bodily injury by disease per employee; \$500,000 bodily injury by disease aggregate; and \$100,000 bodily injury by accident.
- b. Coverage C. All States coverage.
- c. If applicable, USL&H, Maritime Voluntary, and Foreign coverage.
- d. A waiver of subrogation in favor of the Owner.

At the time of signing this Agreement the Architect shall provide to the Owner certificates of insurance in accordance with the requirements of this Paragraph 1.4.2.2. The Architect shall pay the insurance premiums.

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

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

The following coverage shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Products and Completed Operations Liability
- Contractual Liability as provided in Insurance Services Office (ISO) form CG 00 01 10 01 or its equivalent, and as applicable

Pollution exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – CG 00 01 10 01 or equivalent  
Independent Contractors (let or sublet work)  
Host Liquor Liability  
Waiver of Subrogation in favor of the Owner

The Architect shall name the Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota as Additional Insureds, but only with respect to claims arising out of the Architect's negligence or for the negligence of those for whom the Architect is responsible, by endorsement, ISO Forms CG 20 10 and CG 20 37 or their equivalent.

At the time of signing this Agreement, the Architect shall provide to the Owner certificates of insurance in accordance with the requirements of this Paragraph 1.4.2.3. The Architect shall pay the insurance premiums.

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

\$2,000,000 - per occurrence Combined Single limit for Bodily Injury and Property Damage  
The following coverages shall be included:  
Owned, Hired and Non-owned  
Waiver of Subrogation in favor of the Owner

The Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota, the Architect and its agents shall be named as Additional Insureds, by endorsement, ISO Form CA 20 48 or its equivalent, for claims arising out of the Architect's negligence or the negligence of those for whom the Architect is responsible.

At the time of signing this Agreement, the Architect shall provide to the Owner certificates of insurance in accordance with the requirements of this Paragraph 1.4.2.4. The Architect shall pay the insurance premiums.

1.4.2.5 Additional Insurance Conditions:

The Architect's policy(ies) shall be the primary and non-contributory to any other valid and collectible insurance available to the State of Minnesota and the Board of Trustees of the Minnesota State Colleges and Universities, to include the Project's College or University, with respect to any claim arising out of this Agreement.

The Architect is responsible for payment of insurance deductibles.

Insurance companies providing coverage as outlined in Paragraph 1.4.2 must have an "AM Best" rating of A – (minus) and a Financial Size Category of Class VII or better, and be authorized to do business in the state of Minnesota.

Insurance companies for all policies shall waive the right to assert immunity of the Owner as a defense to any claims made and endorsements to policies or the certificate shall indicate this waiver.

The above establishes minimum insurance requirements. It is the sole responsibility of the Architect to determine the need for and to procure additional insurance that may be needed in connection with this Agreement.

Certificates of Insurance acceptable to the Owner shall be submitted prior to commencement of the work under this Agreement. Such Certificates and the insurance policies shall contain a provision that coverage afforded under these policies shall not be cancelled without at least thirty (30) days advanced written notice to the Owner.

A full-certified copy of any policy and endorsements obtained by the Architect as required above, may be requested by the Owner at any time.

The failure of the Owner to obtain Certificate(s) of Insurance, for the policy(ies) required under Paragraph 1.4.2 or renewals thereof, shall not constitute a waiver by the Owner to the Architect to provide such insurance.

1.4.2.6 The Architect shall maintain all insurance in force and effect throughout the term of the Agreement.

1.4.2.7 If the Architect is self-insured, a certificate of self-insurance must be attached.

1.4.2.8 Waivers of Subrogation: To the extent that loss or damage to property, materials, supplies and equipment is covered by insurance pursuant to the provisions of AIA Document A201 – 1997, the General Conditions of the Contract for Construction, Electronic Format as currently amended by the Owner Paragraph 11.3, the Architect and the Architect’s consultants and sub-consultants of all tiers, and the Owner and the Owner’s consultants of all tiers waive all rights against each other and against the Contractor and the Contractor’s subcontractors of all tiers for loss or damage to said property, materials, supplies and equipment.

§ 1.4.2.9. The Architect agrees that during the term of this Agreement it will comply with the provisions of Minnesota Statutes Chapter 363 relative to nondiscrimination.

§ 1.4.2.10 Minnesota Statutes 363.073 provides that for all contracts estimated to be in excess of \$100,000, all respondents having more than 40 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a contract may be accepted. This Agreement will not be accepted unless it includes one of the following:

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

§ 1.4.2.11. In the event the Architect engages any consultant to perform any of the services under this Agreement, the Architect shall pay any such consultant within thirty (30) days of the Architect’s receipt of payment from the Owner for undisputed services provided by the consultant. The Architect shall pay interest of 1-1/2 percent per month (or any part of a month) to the consultant on an undisputed amount not paid on time to the consultant. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Architect shall pay the actual penalty due to the consultant. See Minn. Stat. Sec. 137.36.

§ 1.4.2.12 Architect is required to have a State of Minnesota vendor number so that either its social security number or its federal employer identification number and its Minnesota tax identification number are available to the Owner. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations, and may be used in the enforcement of federal and state tax laws which could result in action to require the Architect to file tax return(s) and to pay delinquent tax liabilities.

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

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§ 1.5.1 For the Architect’s services as described under Article 1.4, compensation shall be computed as follows: as follows:

1.5.1.1 The Architect's total fee is: see Attachment 1.5.1.1. Upon completion and acceptance by the Owner of the various Project phases, the Architect shall be entitled to payment of a portion of this fee in accordance with the following or otherwise negotiated schedule:

a)	Schematic Design Phase	Twenty percent	(20%)
b)	Design Development Phase	Twenty-five percent	(25%)
c)	Construction Documents Phase	Thirty percent	(30%)
d)	Bidding Phase	Five percent	(5%)
e)	Construction Phase	Twenty percent	(20%)
<b>TOTAL</b>		<b>One hundred percent</b>	<b>(100%)</b>

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

1.5.1.2 The Architect shall not receive any additional fee for redesign and rebidding work if rebidding is required pursuant to Subparagraphs 2.1.7.5 and 2.1.7.6.

1.5.1.3 For the purposes of this Article 1.5 only, construction contract Change Orders shall be divided into two groups: (1) Change Orders resulting solely from change in Project Scope (hereinafter called "Scope Change Orders") and (2) all other Change Orders (hereinafter called "Other Change Orders"). Concerning additional fees for services pertaining to construction contract Change Orders, the Architect shall receive additional fees only for services pertaining to Scope Change Orders and then only if either of the following conditions exist:

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

Under no circumstances shall the Architect receive any additional fees for any work pertaining to Other Change Orders.

Architect fees permitted by this Subparagraph 1.5.1.3 shall be negotiated.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.  
negotiated. All additional services will be authorized by written supplement to this Agreement. (Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of (→) one (1.0) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of (→)one (1.0) times the expenses incurred by the Architect, and the Architect's employees and consultants.

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None. See Paragraph 1.3.9.2.

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

~~§ 1.5.7 An initial payment of —(\$ —) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.~~

~~§ 1.5.8 Payments are due and payable — ( — ) days from the date of the Architect's invoice. Amounts unpaid — ( — ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. Payments by the Owner to the Architect shall comply with the requirements of Minnesota Statutes 16A.124, subdivisions 3, 4, 5 and 8.~~

...

~~§ 1.5.9 If the services covered by this Agreement have not been completed within — ( — ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.~~

1.6 The signature lines below are deleted. The signatures of the parties on the signature lines of the Attachment (see Attachment 2.10.) bind those parties to both the Standard Form of Agreement Between Owner and Architect, with Standard Form of Architect's Services, AIA Document B141-1997 Part 1, Electronic Format as currently amended by the Owner (Articles 1.1 through 1.6), and Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997 Part 2, Electronic Format as currently amended by the Owner (Articles 2.1 through 2.10), attached hereto and made a part hereof. The signatures of the parties on the signature lines of the Attachment shall create the Agreement of the parties as to both Articles 1.1 through 1.6 and Articles 2.1 through 2.10.

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

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The preceding sentence notwithstanding, this Agreement shall be effective upon the date that the final required signature is obtained by the Owner.

**OWNER**

Go to Attachment signature line

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Go to Attachment name/title lines

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**ARCHITECT**

Go to Attachment signature line

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Go to Attachment name/title lines

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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 10:01:44 on 05/19/2009 under Order No. 1000368754\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B141™ – 1997 Part 1 - Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services, 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)*