AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Guaranteed Energy Savings Program
Master Contract – Attachment 3
THE OWNER:
(Name, legal status and address)
State of Minnesota
Department of Commerce

THE ARCHITECT:
(Name, legal status and address)

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 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents (hereinafter Contract, Contract Documents or Agreement) consist of the Agreement between the Owner and Contractor, the Payment and Performance Bond, the Corporate Acknowledgement or Individual and Co partnership Acknowledgement, or Limited Liability Acknowledgement, the General, Supplementary and Special Conditions of the Contract, drawings, specifications, bidding documents, addenda, other documents listed in the Agreement, and modifications issued and duly authorized after execution of the agreements.

.1.a. For purposes of this document, the term "Architect" shall mean "Architect or Engineer of Record.

.1.b. For purposes of this document the term "Change Order" shall be shall be defined as "Supplemental Agreement"..

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.7.1. The Project Manual is a volume assembled for the Work which includes bidding requirements, sample forms, General Conditions of the Contract and Specifications or other Instruments of Service.

§ 1.1.8 INITIAL DECISION MAKER – NOT USED

§ 1.1.9 BIDDING DOCUMENTS

The Bidding Documents are the advertisement for bids, thee instructions to bidders, sample forms, the Contractor's bid and addenda relating to any of these.

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§1.1.10 ADDENDUM OR ADDENDA
The addendum or addenda are any written changes, bulletins, revisions or clarifications of the Contract Documents which have been duly issued by the Architect to prospective bidders prior to the time of the Owner receiving bid proposals.

§1.1.11 MODIFICATION
A modification is (1) a Change Order (Supplemental Agreement), (2) a Construction Change Directive, (3) or a written order for a minor change in the work issued by the Architect pursuant to Article 7.4.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of an inconsistency between the drawings and specifications, or within either, where the inconsistency is not clarified by addendum, the better quality or greater quantity of work shall be required as determined by the Architect. Addenda and modifications of the Contract Documents, as defined in Section 1.1.10 and 1.1.11 shall take precedence over the original Contract Documents.

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

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

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

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
§ 1.5.1 Any and all documents produced for the State become the property of the State and the State therefore maintains any copyright on these documents. The Contract Documents, in whole or in part, and copies thereof, are to be used by the Contractor only in respect to this project and shall not be used by the Contractor for any other purpose.

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM
If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 USE OF STATE PROJECT MANAGEMENT SOFTWARE
The Owner may, at its sole option, direct the Architect, Construction Manager, Contractor (as applicable), and/or other Project participants to utilize the internet-based Project Management Software selected by the Owner. The functionality of this software may include, but is not limited to, the processing of the Plan Reviews, Purchase Orders,

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Change Orders, Payment Applications, Requests for Information, and Document and Schedule Management related to the Project.

If the Owner chooses to utilize Project Management Software selected by the Owner, the Owner will provide or arrange for a login license for the applicable parties, at no cost to the applicable parties.

The Owner will provide or arrange for initial software training to the applicable parties. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of the software by the applicable parties.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The terms "Owner", "State", or "State of Minnesota" wherever they appear in the Contract Documents is the State of Minnesota. The authorized representative for the State of Minnesota is the Commissioner of Commerce or his/her representative..

§ 2.1.2 NOT USED

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 NOT USED

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site and any other information it has available. Within 20 days of receipt, the Contractor is required to review any materials (such as surveys, soil tests, existing structures or conditions, locations of utilities, etc) furnished by the Owner, and notify the Owner of the discovery of any inaccuracy. The furnishing of this material by the Owner shall not relieve the Contractor of its responsibilities under the Contract Documents. The Owner will provide any information required by the Contract Documents reasonably necessary to execute the work. The Owner makes no representations, warranties or guarantees as to the accuracy of information provided to the contractor.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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

§ 2.2.6 Security features of building plans, specifications, and drawings of state owned facilities and non-state owned facilities leased by the state are classified as nonpublic data when maintained by the Department of Administration and may be shared with anyone as needed to perform duties of the commissioner. However, consultants and contractors shall not release these plans and specifications to anyone without the Owner's approval.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

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§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such failure or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. The amounts charged to the Contractor are subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Article 15, Claims and Disputes does not apply to a request by the Owner that the Architect approve the use of the remedy provided in Section 2.4.

§2.5 OWNER'S USE OF THE PROJECT

The Owner shall have the right to take possession of and use completed or partially completed portions of the work even though the time of completing the entire work, or such portion thereof, may not have expired, and such use shall not constitute acceptance thereof. The Owner's possession will not interfere with the Contractor's work. The Owner may engage in move-in activities such as furniture installation but will not physically occupy the work until such work is accepted by, and occupancy permit is issued by, the code jurisdiction of authority.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall not perform any work unless and until the Contractor is in compliance with Article 3.11.1 -Documents and Samples at the Site.

§ 3.1.3 The Contractor, when requested by the Architect, shall meet with the Architect and the Architect's representative and consultants, at reasonable times and furnish all information requested. The Contractor shall allow the Architect, the Architect's representatives and consultants full access to the work to facilitate inspection of the Work. Neither the Owner nor Architect shall be liable to the Contractor for extra compensation or damages for interference or delays on account of any meeting, and, the supply of information, tests or inspections. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner, the Architect, in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by the Owner, the Architect, or persons or entities other than the Contractor. Claims may be made in accordance with Article 15 of the AIA A201.

§ 3.1.4 The contractor shall employ and/or subcontract with subcontractors that are qualified to successfully complete the Work indicated in the Contract Documents and within the contract time specified.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall make every effort to identify inconsistencies that may exist. Before starting each portion of the Work, carefully study and compare the Drawings, Specifications, Addenda and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, and shall observe and take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall promptly report in writing to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Architect will respond pursuant to Sections 4.2.11 and 4.2.12. The Contractor shall not start any portion of the Work if uncertain

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about the meaning or intent of the Contract Documents. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2, 3.2.3 and 3.2.5, the Contractor shall make claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 and 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

§ 3.2.4 The Contractor shall be responsible for accurately staking new work on the site, and shall run the axis lines locating the work, establish correct datum points, and check each line and point on the site to ensure accuracy. All such lines and points shall be carefully preserved throughout construction. The Contractor shall (1) lay out all work from dimensions given on drawings, (2) take measurements and verify dimensions of existing or old work, if any, that affect the work or to which its work is to be fitted, (3) be responsible for the correctness of all measurements and shall verify all grades, lines, levels, elevations and dimensions shown on the drawings, and (4) report any errors or inconsistencies to the Architect prior to commencing work in the form as the Architect may require.

§ 3.2.5 No Change to the Contract Sum will be allowed on account of minor differences between actual field conditions and the Contract Documents. A minor difference is defined as a requirement in the contract documents that is not materially different from the actual field condition(s).

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. The Owner or the Architect, shall be responsible for damages arising from the Owner, or the Architect, respectively, for knowingly directing the Contractor to perform unsafe work. Nothing in this Section 3.3.1 shall be construed as limiting any claims the Owner or Contractor may have against the Architect for any such loss or damages.

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

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

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents specifically require work to be performed beyond normal working hours, weekends or holidays, or should the completion time require work to be performed at said times, or, should the Contractor elect to perform work at said times, with the permission of the Owner, any additional costs resulting from working at said times are the Contractor's sole responsibility.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making a request for a substitution, the Contractor:

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.1 Represents that the Contractor has personally investigated the proposed substitute item, material and/or process, and determined that it is equal or superior in all respects to that specified.
.2 Represents that the Contractor will provide the same or better warranty for the substitute item than that provided with the specified item.
.3 Certifies that the cost data presented at the time of the request is complete and includes all related costs under this contract, including the Architect's review and redesign costs, and waives all other claims for additional costs related to the substitution that are not presented with the request.
.4 Will coordinate the installation of the accepted substitute, implementing minor changes that are required for the work to be completed, in accordance with Article 7.4
The above representations, certifications and agreement to coordinate do not obligate the Owner to consent to the substitution. Owner consent to the substitution does not constitute approval of the cost data submitted, unless the cost data is specifically approved in writing.

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

§ 3.4.4 HAZARDOUS MATERIALS BANNED

§ 3.4.4.1 PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED.

Contractor certifies that it has read and will comply with Laws of Minnesota, 2007, Chapter 57 (to be codified at Minn. Stat. §§ 325E.385-325E.388) as provided below.

§ 3.4.4.2 ASBESTOS CONTAINING MATERIALS BANNED

No asbestos containing materials shall be brought on the project site, installed on the project, or used in the installation of Work for the project. See Section 10.3 – Hazardous Materials.

§ 3.4.4.3 RESTRICTIONS ON PURCHASING AND USE OF UNDILUTED COAL TAR SEALERS

Undiluted coal tar sealers will not be used on the project. Undiluted coal tar sealers are defined as any sealant containing coal tar that has not been mixed with asphalt and is intended for use on asphalt surfaces, including driveways and parking lots. See the 2009 MN Statutes §116.201.

§ 3.4.5 RECYCLING AND WASTE MANAGEMENT

For all State bonded construction, renovation, or demolition projects costing $5,000,000.00 or greater that are located within 40 miles of a construction and demolition waste recycling facility, the Contractor and any subcontractors must divert from deposit in a landfill and must recycle at least 50 percent of the nonhazardous construction and demolition waste, measured by tonnage or volume, produced by the project or demonstrate that the waste was delivered to construction and demolition waste recycling facilities that maintain a 50 percent annual recycling rate. The Contractor shall submit a Waste Management and Recycling Program Plan for these projects to the Architect who shall review and submit it to the State for final approval. If the project plans and specifications for the project carry a more stringent requirement for recycling as it applies to quantity recycled, project cost, project funding source, or haul distance to a recycling facility, the more stringent requirement will apply.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of specified or superior quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty is not limited by the provisions of Section 12.2. Guarantees required by the Contract Documents shall not exclude or otherwise limit the Owner's possible remedies at law and shall not be construed as a waiver by the Owner of any other remedy.

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§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received. **All such fees, including sewer and water access charges, Minnesota Pollution Control Agency general storm water permits, and Federal Water Permits, park fees, shall be paid by the Contractor and failure to account for all such charges shall not increase the Contract Sum unless allowances were identified in the construction documents.** Total fees charged for a Building Permit may not exceed the amount prescribed in the latest edition of the Minnesota State Building Code. Procurement of permits does not relieve the Contractor of the requirement for complying with the Contract Documents that exceed the requirement of governing laws, ordinances and statutes.

§3.7.1.1 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

(NPDES) PERMIT. Pollution of natural resources of air, land and water by operations under this Contract shall be prevented, controlled, and abated in accordance with the rules, regulations, and standards adopted and established by the Minnesota Pollution Control Agency (M.P.C.A.) and the following:

.1 By signing the Contract and completing the NPDES permit application, the Contractor is a co-permitee with the Owner to ensure compliance with the terms and conditions of the General Storm Water Permit for Construction Activity (MN R100001) and is responsible for those portions of the permit where the operator is referenced. This Permit establishes conditions for discharging storm water to waters of the State from construction activities disturbing one acre or more of total land area. A copy of the "General Permit Authorization to Discharge Storm Water Associated with a Construction Activity Under the National Pollutant Discharge Elimination System (NPDES)/State Disposal System Permit Program" is available at:

http://www.pca.state.mn.us/index.php/water/water-types-and-programs/stormwater/construction-stormwater/construction-stormwater.html

.2 The Contractor shall apply and pay for the NPDES Permit on this Project. Payment for the application shall be incidental to the Contract and no direct compensation will be made. The Owner will provide the Contractor information on how to complete the Owner's portion.

.3 No work which disturbs soil and/or work in waters of the state will be allowed on this Project until the NPDES Permit is in effect and the department has received the required documentation.

.4 The Contractor shall be solely responsible for complying with the requirements listed in Part II.B and Part IV of the General Permit.

.5 The Contractor shall be responsible for providing all inspections, documentation, record keeping, maintenance, remedial actions, and repairs required by the permit. All inspections, maintenance, and records required in the General Permit Paragraph IV.E, shall be the sole responsibility of the Contractor. The word "Permitee" in these referenced paragraphs shall mean "Contractor". Standard forms for logging all required inspection and maintenance activities shall be used by the Contractor. All inspection and maintenance forms used on this Project shall be turned over to the Architect/Engineer every two weeks for retention in accordance with the permit.

.6 The Contractor shall have all logs, documentation, inspection reports on site for the Architect/Engineer's review and shall post the permit and MPCA's letter of coverage on site. Meetings with the MPCA, Watershed District, WMO, or any local authority shall be attended by both the Architect/Engineer and the Contractor or their representatives; the Contractor and/or the Architect/Engineer shall contact the Owner prior to a scheduled meeting. No work required by said entities, and for which the Contractor would request additional compensation from the Owner, shall be started without approval from the Architect/Engineer. No work

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required by said entities and for which the changes will impact the design or requirements of the Contract documents shall be started without approval from the Engineer.

.7 The Contractor shall immediately notify the Engineer of any site visits by Local Permitting Authorities performed in accordance with Part V.H.

.8 Emergency Best Management Practices must be enacted to help minimize turbidity of surface waters and relieve runoff from extreme weather events. It is required to notify the MPCA Regional contact person within 2 days of an uncontrolled storm water release.

.9 The names and phone numbers of the MPCA Regional Contact personnel can be found at: http://www.pca.state.mn.us/water/stormwater/stormwater-c.html. The Contractor is reminded, during emergency situations involving uncontrolled storm water releases that the State Duty Office must be contacted immediately at 1-800-422-0798 or 1-651-649-5451.

.10 The Contractor shall review and abide by the instructions contained in the permit package. The contractor shall hold the Owner harmless for any fines or sanctions caused by the Contractor's actions or inactions regarding compliance with the permit or erosion control provisions of the Contract Documents.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Except in those Municipalities that provide State-approved electrical inspection, all installation of electrical work shall be inspected by the Minnesota Board of Electricity. The Contractor shall procure and pay for all required electrical inspections.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. This requirement does not relieve the Contractor of the responsibility for complying with the Contract Documents if the Contract Documents requirements exceed those of governing codes and regulations.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those affirmatively indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that could not have been anticipated and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, or (3) are not observable prior to bidding or inferable by the type of construction, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those affirmatively indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, or archaeological sites not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15. Additionally, Contractors shall comply with Minnesota Statute 307.08

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§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall communicate with the Owner through the Architect.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The superintendent shall be assigned continuously to the work from Notice to Proceed until Final Completion. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed, and, the Contractor shall not change the Superintendent unless the Superintendent ceases to be employed by the Contractor."

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, no later than ten (10) days following the date on which the Contractor received written notice to proceed from the Owner, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

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

§3.10.4 The schedule submitted by the Contractor shall have a completion date that corresponds to the completion date set forth in the Contract Documents. The Contractor is responsible for meeting this schedule without any adjustment to the Contract Sum, and by executing the Contract, the Contractor confirms that it is capable of properly completing the work within the completion date set forth in the Contract Documents."

§3.10.5 The Contractor must provide a minimum of five working days prior notice for specified testing or inspections that are to be performed by the Owner or Separate Contractors. Such testing and inspections shall be included in the

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Contractor's schedule."

§3.10.6 If the Contractor, Architect, or Owner determines at any time, and for any reason, that the work has fallen fifteen (15) calendar days or ten (10) working days, behind the scheduled contract time, milestone date, phased work completion date, critical path date, or work indicated on the latest submitted schedule, the Contractor shall submit a Recovery Schedule within seven (7) calendar days of the Architect's written request or date the Contractor has knowledge that the work has fallen behind. The Contractor shall also submit a Recovery Plan indicating actions to be taken to recover the schedule. The Recovery Plan shall document the following:

.1 Description of work that is behind schedule
.2 Reason for work being behind schedule. If the Contractor claims that the delay is due to an event or condition that was outside the Contractor's ability to control, the Contractor shall include all documentation sufficient to justify the delay in accordance with Articles 8.3.1, 8.3.2, and 8.3.3.
.3 Identification of all resources necessary to recover the schedule including all materials, labor, equipment and changes in operations.
.4 Detail of all additional resources necessary to recover the schedule including, but not limited to additional quantities of manpower, overtime, increased number of hours per day, increased number of work shifts per day, increased number of work days per week.
.5 Duration of time necessary to Recover the Schedule.

The Contractor shall implement the Recovery Plan and recover the schedule at no cost to the owner and no additional contract time unless the claim is substantiated and approved in accordance with Section 8.3 and Article 15.

A breach and default of contract shall result from the Contractor's failure to provide the Architect and Owner with the Recovery Plan and Recovery Schedule and/or failure to implement the Recovery Plan.

Should the Contractor claim and provide sufficient documentation to substantiate that the delay was beyond the control of the Contractor the Owner shall reserve the right, in its best interest, to determine if the Recovery Plan and Schedule shall be implemented.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in

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accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor is responsible for all cutting, patching, drilling, fastening, anchoring of all new and existing construction required to complete the work. All areas shall be restored to the condition existing prior to the cutting, patching, drilling, fastening, anchoring, and fitting unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by

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excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

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

§ 3.15.2 The cost of cleanup performed by the Owner as a result of the Contractor's failure to provide the cleanup required by the Contract Documents, shall be deducted from the Contract Sum.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner, Architect, their consultants, other persons authorized by the Owner and Authorities having jurisdiction over the work, access at all times to the project site and to Work in progress, in preparation or completed. The Contractor shall provide safe and proper facilities for such access and for testing, inspections and separate Contracts and shall secure and protect samples and testing equipment.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, and in accordance with Article 11, the Contractor shall indemnify and hold harmless the Owner, Owners' Representatives, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

§3.18.3 The obligations of the Contractor under this Section 3.18 shall not negate, abridge or reduce the liability of the Architect, the Architect's consultants and agents and employees of any of them.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The term or word "Architect" or "Architect of Record" used in the Contract Documents shall mean Architect, Engineer, Designer, or other person or entity designated by the Owner to perform the Architect's role required by the Contract Documents.

§ 4.1.2 The Owner shall have sole authority to modify or extend the authority of the Architect.

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§ 4.1.3 If the Architect of record for the Contract is no longer employed by the Owner or is otherwise unable to fulfill the required obligations of the Contract, the Owner shall designate a responsible party to fulfill the obligations under the Contract. The Owner reserves the right to designate itself.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the final payment is due. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. However, where the Architect observes deficiencies in the Work, or where the Architect observes the Contractor or Subcontractor failing to execute the work in accordance with the Contract Documents, the Architect shall, within 24 hours, notify the Contractor and Owner, in writing, of all such deficiencies. The Architect shall promptly notify the Owner when, in the Architect's opinion, the work should be stopped. Authority to stop the work shall rest with the Owner.

§ 4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Owner may communicate directly with the Contractor and Subcontractors and advise the Architect of those communications.

§ 4.2.5 Based on project site observations and evaluations of the Contractor's application for payment, the Architect shall determine the amount owing to the Contractor and shall sign and issue the application and certificate for payment. Such signature and issuance shall constitute a representation by the Architect to the Owner that, in the Architect's professional opinion, the work has progressed to the point indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The Architect is responsible for deducting from the Contractor's Application for Payment the value of work not completed, not conforming to Contract Documents, or otherwise in dispute.

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. All such rejected work shall be removed from the site as soon as possible at no expense to the Owner. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken

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in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. If a question, dispute or controversy between the Owner and Contractor arises out of a provision of the Contract Documents, or the Architect's interpretation thereof, for which a decision process is not otherwise prescribed in the Contract Documents and which the parties are unable to resolve through Change Order or otherwise, the Owner and the Contractor may exercise legal remedies available to them.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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§ 5.1.3 The Contractor shall include the following in any Contract with a Subcontractor: The attention of the Subcontractor is directed to Minnesota Statutes, Chapter 574, which requires the prime Contractor to file a payment and performance bond for the project with the State of Minnesota. Section 574.31 of that Chapter states the limit of time within which a subcontractor must take certain actions specified therein to preserve a claim for nonpayment against the payment bond surety. Subcontractors of any tier may not bring claims against the Owner.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, no later than ten (10) days following the date on which the Contractor received written notice to proceed from the Owner, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 Where multiple Contracts are in effect or the Owner is utilizing its own forces for a portion of the Work, the Contractor's schedule and progress shall govern the work of other Contractors. The Contractor shall provide reasonable advance notice to other Contractors and the Owner regarding the schedule and Work to be performed by them. The other Contractors and/or the Owner's forces shall, after such notification, diligently proceed with their portion of the Work, including furnishing, installation, laying out or incorporation of Work, so as not to delay or impede the Contractor or its job progress.

§ 6.1.4 NOT USED

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly correct damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner's own forces and each separate contractor shall have the same responsibilities for cutting and patching for their work as are described for the Contractor in Section 3.14.

§ 6.2.6 Claims and disputes between the Contractor and separate Contractors are subject to the provisions of Article 15. The Contractors will indemnify, defend and hold harmless the State, and any of its consultants or agents against any

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claims arising from any such dispute. Notwithstanding the foregoing, any legal representation to defend the Owner is subject to the approval of the Minnesota Attorney General, and, at the Owner's discretion, the Contractor will pay the attorney fees in lieu of defending the Owner.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will assess the cost to those responsible.

ARTICLE 7 CHANGES IN THE WORK In Article 7, and throughout the contract documents, whenever the term "Change Order" is used, it shall be substituted with the term "Supplemental Agreement". This includes all companion documents utilized for construction contract administration.

§ 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; a written order for a change in the Work may be issued by the Architect alone along with written approval from the Owner; a written approval from the Owner may be issued by the Owner alone.

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.2.2 Methods and requirements used in determining adjustments to the Contract Sum shall include those listed in Sections 7.3.3 and 7.3.7. The Contractor shall provide costs broken down into material and labor units with their respective unit costs in accordance with Section 7.3.7. The Owner shall not be obligated to make payment for change orders or be liable for late payments and interest on changes until the Contractor provides cost breakdowns as required by Section 7.3.7 and until a Change Order is executed.

§ 7.2.3 The Contract sum and Contract time shall be adjusted only by Change Order and the Contractor shall provide documentation of changes in accordance with Section 7.3.3 and 7.3.7. The Contractor shall itemize the costs of the changes and provide material and labor cost breakdowns to support the costs being claimed as a result of the change. The signature of the Contractor on the Change Order binds the Contractor to all terms thereof and shows the Contractor's complete agreement therewith.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the change shall be incorporated into the contract by Change Order and the adjustment shall be based on one of the following methods:

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.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data provided in accordance with Section 7.3.7, to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 **NOT USED**

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and a subsequent Change Order shall be executed. A Construction Change Directive signed only by Owner and Architect constitutes a Change in the Contract which the Owner recognizes that the Contractor may be entitled to an adjustment to the Contract Sum if substantiated by the Contractor.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 labor costs are limited to the published and specified prevailing hourly basic rate or the negotiated hourly rate whichever is higher plus applicable multipliers for overtime, weekends and holidays, plus labor burden including: social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; and actual net payroll taxes. Further markups to labor are not permitted. The Contractor may express labor burden as a fixed percentage of the base hourly rate, however, such percentage is subject to review and adjustment by the Owner at any time. Labor hours may include only workers and working foreman directly involved in performing the Change Order work. Supervision above working foreman (such as general foreman, superintendent, project manager, etc.) is considered to be included in overhead and profit, and not allowed as a line item.

.2 net actual Contractor or Subcontractor costs of itemized materials including applicable sales taxes, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; equipment with an original purchase cost of more than $500 and when rented from the Contractor or Subcontractor(s), the maximum rate is limited to 75% of the rental rate as set forth in Rental Rate Blue Book for Construction Equipment by Dataquest (latest edition) and shall include fuel and maintenance;

.4 costs of bond premiums, permit fees and taxes incurred by the contractor as a result of additional work that is approved by the owner. Payment for bond premium increases and additional permit fees will be made in accordance with Article 7.2 and upon presentation by the Contractor of proof of payment, or invoice related to the additional Work;

.5 It is the policy of the Owner to pay direct costs for supplemental work plus a reasonable amount for Overhead and Profit (OH&P). In addition to the costs provided for above, Contractors and subcontractors may add up to 10% of the direct cost of their own labor, 5% of the direct cost of materials and equipment, and 5% of the cost of subcontractors or sub-subcontractors. The total mark-up for OH&P for all tiers involved in a change to the contract sum shall not exceed 20 percent. OH&P may be less than the foregoing amounts depending on the nature, extent or complexity of the change when it is not commensurate with the responsibility and administration involved with the

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change, such as the Contractor merely processing a substantial Change Order to a Subcontractor or the Contractor processing a Change Order for additional equipment required by the change. Costs for material distribution, tool and equipment fees, project difficulty, warranties, supervisory equipment, Change Order pricing and preparation or similar fees are defined as overhead cost.

.6 The documentation for adjustment to the Contract sum shall include the following for each Contractor and subcontractor of any tier and must be in form provided by or agreed to by the Owner.

a. Name of Project
b. Name of the Contractor or Subcontractors
c. Name of material and equipment suppliers
d. A detailed description of the work performed and reference to proposal requests and Change Order Directives
e. Breakdown of labor and material costs are mandatory, including subcontractor and material supplier costs.
   1. Labor costs shall include number of hours and hourly rate based on certified payroll.
   2. Material costs shown separately and individually by unit and unit price. The Owner reserves the right to require the submittal of supplier's invoices.
   3. Calculation of the amount of OH&P added; see 7.3.7.5 for OH&P calculation requirements.
   4. Signature of Contractor and involved subcontractors

.7 The Owner may, at the Owner's sole discretion, waive the requirement for the cost breakdown of changes that total $1,500.00 or less and utilize a lump sum.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 15..

§ 7.3.10 NOT USED

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. A subsequent Change Order shall be executed.

§ 7.5 OWNER'S RIGHT TO PERFORM CHANGES IN THE WORK

Notwithstanding Article 6, if the Owner does not agree to the Contractor's proposal to perform changes in the work, or if the Owner does not deem it advisable or expedient to proceed on the basis of the proposal, the Owner reserves the right to perform changes in the work with its own forces, or to contract with others to perform the changes.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.5 Where the performance of any act is directed, the time shall be computed so as to exclude the first and include the last day of the prescribed period**.** When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner for causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Extensions of Time will be considered and allowed only under the following conditions and/or circumstances, and only if the construction schedule is adversely affected by the change:

.1 Only those conditions enumerated in Section 8.3.1 above, over which the Contractor has no control will be considered. The burden of proof for the change in time shall rest with the Contractor, including documentation that the condition was beyond its control and documentation as to the extent of the proposed extension.

.2 A delay in the process of the work actually occurs as a result of one of the valid causes for extension.

.3 An unusual delay in delivery occurs solely due to delay in common transport beyond the Contractor's control. An extension of time will not be granted for delays in delivery where the delivery was not properly scheduled or an order not placed at an appropriated time to allow delivery or an order is improperly placed.

.4 With respect to a Change Order proposal for an extension of time due to climatic conditions, the parties shall consider the location of the site and the type of work affected, and shall recognize only unusually severe variations from average conditions. The Contractor must submit, with the request, local U.S. Weather Bureau climatological reports for the period involved plus a report indicating the average precipitation, temperature, wind velocity, etc. for the past 10 years from the nearest reporting station. Foul weather in itself will not be a valid reason for time extension. Requests for time extensions due to weather extremes will only be considered for the overall project based on analysis of the project schedule and will not be considered unless a substantial variation from seasonal average weather conditions occurred for a significant period of time and operations were necessarily affected. If the Contractor encounters unusually favorable weather subsequent to the issuance of a time extension for weather, the Contractor shall cooperate with the Owner and Architect to determine a time reduction based on the same analysis of the construction schedule.

.5 For changes in the work which significantly affect the time and process of the entire work and where the anticipated delay period can be reasonably calculated at the time the change is requests, any time extension shall be made no later than when the change is authorized by the Owner, and such extension shall be for such reasonable time as the Architect may determine upon analysis of the project schedule. Where the period of delay cannot be reasonably determined at the time the Owner authorizes the change, the Contract shall estimate the time period of delay, and propose a potential mechanism for the Architect to identify a reasonable extension to Contract time. For changes in the work which do not affect the process of the entire

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work, the Owner reserves the right to grant a time extension only for area, phase, activity or element in the Work affected by the change. Any approved time extension shall be implemented by a Change Order.

.6 A request for an extension of time made as a result of a labor dispute shall not exceed the actual period of the dispute, plus reasonable mobilization time. Any related, approved extension may be less than the period of dispute, depending on the actual effect the dispute had on the progress of the Work. Lockouts over which the Contractor has control will not be a valid reason for time extension.

.7 No time extension will be granted for delays resulting from improper scheduling or failure to have shop drawings or samples submitted to the Architect in ample time for a review.

.8 Delays caused by Subcontractors will be considered for time extension only under the same conditions defined above.

.9 Except for changes in the work, all requests for extension of time shall be made in writing to the Architect not more than 21 calendar days after the beginning of the first occurrence of the delay. No request will be considered beyond the stated time without the consent of the Owner.

.10 No time extensions will be granted for delays from failure by the Contractor to schedule inspections, testing and the work of separate contracts.

.11 Contractor "float" time built into the project schedule may be proportionately deducted from any approved extension.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, no later than ten (10) days following the date on which the Contractor received written notice to proceed from the Owner, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, and on an Owner prescribed form, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 NOT USED

§ 9.3.1.2 NOT USED

§ 9.3.1.3 The Contractor shall comply with Section 9.11 and, shall submit payroll records as prescribed therein and in the Contract Documents and the Contractor shall bind all labor and material subcontractors to this requirement for this project and submit subcontractor payroll records as prescribed in Section 9.11 and the Contract Documents.

§ 9.3.1.4 The Owner will not make payment for Work or materials that are not installed or on the Owner's property or otherwise in the Owner's possession.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Should the Owner approve and pay for materials stored in an off site location, the Contractor shall insure the off site materials in such a manner as to protect the interest of the Owner against loss of stored materials and against loss of title to and ownership of stored materials.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFYING APPLICATIONS FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, certify the Application for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 Certifying the Application for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. Certifying and Application for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. The Architect is responsible for deducting from the Contractor's Application for Payment, the value of the work not completed, not conforming to the Contract Documents, or otherwise in dispute. To the extend this Section 9.4.2 is inconsistent with Article 15, as amended herein, Article 15 shall govern and be incorporated by reference into this Section 9.4.2.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold an Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly certify an Application for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold certification on an Application for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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§ 9.5.3 NOT USED

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has certified an Application for Payment, the Owner shall make payment in accordance with Minnesota Statutes 16A.124 which states that the Owner shall make payment within 30 days of receipt by the Owner of non-contested invoices. For this contract, an invoice is defined as an Application for Payment.

§ 9.6.1.1 Unless otherwise provided in the Contract Documents, the Owner shall follow the requirements of MN Statute 15.72 Subd.1 and Subd. 2, and MN Statute 15.73 Subd. 1, Subd. 2, Subd. 3, and Subd. 4. The Owner, in making partial payments, will retain five (5) percent of the duly approved value of the work performed under the Contract Documents as the date of the Contractor's Application for Payment until final completion and acceptance of all work covered by the Contract. The Contractor has the option, with Owner's consent, of depositing bonds or securities in a Bank or Trust Company to be held for the benefit of the Owner, in lieu of cash retainage. In that event, the Owner shall reduce the retainage in an amount equal to the value of the bonds or securities. Interest on the bonds or securities shall be payable to the Contractor as it accrues. Bonds and securities deposited or acquired in lieu of retainage, shall be of a character approved by the State Treasurer, including but not limited to:

.1 Bills, certificates, note or bonds of the United States.
.2 Other obligations of the United States or its agencies.
.3 Obligations of any corporation wholly owned by the Federal Government.
.4 Indebtedness of the Federal national Mortgage Association.

§ 9.6.1.2 If the Owner incurs additional cost as a result of the exercise of the option described above, the Owner may recover the costs from the Contractor by reducing the final payment due under the Contract. As work on the Contract progresses, the Owner shall, upon demand, inform the Contractor of all accrued costs.

§ 9.6.1.3 If, after the work provided for in the Contract shall have been fifty (50) percent completed, and performed to the satisfaction of the architect, the retainage may be reduced to zero (0) percent on payments for the remaining work. The reduction amount is determined at the sole discretion of the Owner, and required certification by the architect that the Contractor is properly and continuously expediting the work. The Owner reserves the right to retain all or part of retainage after substantial completion until all Contractual obligations are completed in accordance with Section 9.8.5. Partial use or occupancy of the project by the Owner is not sufficient cause for reduction of retainage.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.2.1 In accordance with Minnesota Statutes 16A.1245, the Contractor shall, within 10 days of receipt of a progress payment, pay all Subcontractors and suppliers having an interest in the Contract their prorated share of the payment for all undisputed services provided by the Subcontractors and suppliers.

§ 9.6.2.2 The Contractor may withhold as retainage from Subcontractor(s) progress payments an amount not to exceed five (5) percent of the payment. The Contractor shall reduce or eliminate the retainage for a Subcontractor in the same manner that the Owner reduces or eliminates the retainage for the Contractor.

§ 9.6.2.3 The enforcement of these conditions shall be the responsibility of the Subcontractor(s) working through the Contractor and the Contractor's surety. To facilitate the resolution of any problems relating to these provisions, the Contractor shall furnish the Subcontractor(s) with the name, address and telephone number of the Contractor's surety within ten (10) days of the date on which the Contractor signs a Contract with the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted

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Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 Payment by the Owner, based on an Application for Payment, or a Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 NOT USED

§ 9.7 **NOT USED**

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 After validating the Contractor's claim of Substantial Completion and accompanying list, the Architect will perform site inspections to verify work completion and prepare a supplemental comprehensive list of items to be completed prior to Substantial Completion and prior to final payments.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner may, at the sole discretion of the Owner, make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete, defective, not in accordance with the requirements of the Contract Documents, or unsettled claims, and shall include the cost of any third party to finish incomplete, incorrect or defective work, and compensation and expenses of the Architect and Owner for work related thereto.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may with the consent of Contractor's surety, if required, and consent of authorities having jurisdiction of the work, if required, use or occupy any portion of the work whether or not substantially complete in accord with Sections 9.8 and 2.5.1.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. The Architect shall prepare an itemized list of incomplete and defective work based on the Architect's observations and inspections of the work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

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§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. If the work is determined not to be complete, the Owner may deduct from the Contractor's final payment the cost of all subsequent inspections by the Architect.

§ 9.10.1.1 In the event incomplete, incorrect or defective work is not completed to the Owner's satisfaction within 30 calendar days of the architect's notice to the Contractor that such Work is incomplete, incorrect or defective, the Owner must notify the Contractor per Section 2.4.1, and may complete and correct work and deduct from the final payment any and all costs incurred by the Owner in completing such Work.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (6) Contractor has submitted all closeout items required by the Contract Documents, including, but not limited to, Operations & Maintenance Manuals, As-Built drawings, and properly executed Department of Revenue IC-134 forms. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents; or
- **.3** terms of special warranties required by the Contract Documents.
- **.4** faulty or defective Work appearing after Substantial Completion

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 LIQUIDATED DAMAGES

§ 9.10.6.1 If provided for in the Special Conditions, the Owner will be entitled to deduct liquidated damages from the final payment for failure of the Contractor to complete the projects by the date specified in the Contract. The

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Contractor will be assessed a charge in the amount specified, not as a penalty, but as liquidated damages to compensate the Owner for all additional costs incurred.

§ 9.10.6.2 The reasonableness of the charge is presumed, and the amount assessed is in addition to any other remedies available to the Owner. The charge will be assessed for each period the entire project is not suitable for use and/or occupancy measured from the Contract completion date to the date of Substantial Completion. No liquidated damages will accrue during periods of authorized delays or suspension. The charge will be as scheduled in the Special Conditions.

§ 9.10.6.3 The Owner may waive any portion of or all of the accrued liquidated damages provided (a) the project is ready for occupancy by the Owner or (b) available for the next stage construction as determined by the Owner.

§ 9.10.6.4 The Owner does not waive any rights under the Contract by the collection of liquidated damages. Liquidated damages will continue to be charged to the Contract or the Contractor's Surety in the event of Contractor default and Owner continuing or supplementing the work with its own forces or separate Contractors.

§ 9.11 PREVAILING WAGES

§ 9.11.1 Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

The prevailing hours of labor may not be more than eight hours per day or more than 40 hour per week. Pursuant to Minnesota Statutes 177.43, "No laborer or mechanic employed directly on the project work site by the Contractor or any subcontractor, agent or other person doing or contracting to do all or a part of the work of the project, is permitted or required to work more hours than the prevailing hours of labor, unless paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay; and a laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area." Nothing in this Contract shall be construed as prohibiting the Contractor or subcontractor paying a higher negotiated wage rate. This requirement does not apply to wage rates and hours of employment of laborers or mechanics who process or manufacture materials or products or to the delivery of materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply processed or manufactured materials or products. This section applies to laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

§ 9.11.2 To facilitate compliance pursuant to the State Statutes, wage determinations (prevailing wages) were prepared for different trades for each county from which labor for said project would be secured and are included and published in the Contract Specifications. Any wage determinations that are found not to be so promulgated do not relieve the Contractor from any responsibility for paying the prevailing wage rate of the trade in question. All laborers, workers, and mechanics must be paid the prevailing wage rate for work performed on the project. If the wage certification or published prevailing wages do not include a rate for a classification of work used on the project, the contractor shall contact the Department of Labor and Industry to obtain a rate.

§ 9.11.3 In accordance with Minnesota Statutes 177.30 Sub. 4 and 177.43 Sub. 3, the Contractor and Subcontractor shall furnish to the Contracting Authority and the Project Owner all payrolls, of all workers on the project, a certified payroll report via E-mail as attachments, a State of Minnesota Prevailing Wage Payroll Report as a Microsoft Excel file and Statement of Compliance Form as a PDF file to the appropriate E-mail address:

.1 NOT USED.

.2 Use the E-mail address provided in the solicitation or as provided by the Agency.

The State of Minnesota Prevailing Wage Payroll Report and Statement of Compliance Form are available on the MMD website at www.mmd.admin.state.mn.us/mn02000.htm. Submit the completed and signed State of Minnesota Prevailing Wage Payroll Report as a Microsoft Excel file and the Statement of Compliance Form as a PDF file, no

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other payroll forms will be accepted to meet this requirement.

These completed forms must be furnished not more than 14 days after the end of each pay period.

The Subject Line on the Contractor's and Subcontractor's E-mail must show the Firm name, the Contract Number or Purchase Order Number and the pay period ending date.

Failure to maintain records as required by Minnesota Statutes 2008, Section 177.30 may be fined up to $1,000 for each failure to maintain said records. This penalty is in addition to any penalties provided under section 177.32, Subd. 1. Contractors and subcontractors must keep these records for three years after the contracting authority has made final payment on the public works project.

For questions regarding the Prevailing Wage Laws, contact the Department of Labor and Industry at 651.284.5091.

§ 9.11.4 The Contractor is solely responsible for payment of all required Prevailing Wage rates. Further, the State will not be liable for increased labor cost, errors in the rates or classifications, or changes to same prior to the awarding of Contracts. Information pertaining to the prevailing wage rates, prevailing hours of labor and hourly basic rates are included in this specification. Said wage rates must be posted in at least one conspicuous place for the employees working on the project.

§ 9.11.5 Any Contractor, subcontractor, or agent, who, after executing a contract in compliance with this section, pays to any laborer, workman, or mechanic employed directly on the project, a lesser wage for work done on the project than the prevailing wage rate, shall be subject to fine and imprisonment. This misdemeanor is punishable by a fine of not more than $700, or imprisonment for not more than 90 days, or both. Each agent or subcontractor shall furnish to the contractor evidence of compliance with this section. Each day a violation of this section continues is a separate offense.

§ 9.11.6 In accordance with Minnesota Statutes 177.43, sub. 6a, upon issuance of a notice of a compliance order and withholding order issued by the Department of labor and Industry to the Contractor of subcontractor or another employer pursuant to section 177.27, sub. 4 for violation of sections 177.41 to 177.44, the Owner, as the contracting authority shall withhold payment of sufficient sum to the prime or general contractor on the project to satisfy the back wages assessed or otherwise cure the violation, and the owner must withhold the sum ordered until the compliance order has become a final order and has been fully paid or otherwise resolved by the Contractor.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable, and legally required, precautions for safety of, and shall provide reasonable, and legally required, protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

.1 Hotworks: In addition to legally required and specified protection requirements, the Contractor is responsible for obtaining the Owner's Personnel/Property protection requirements from the facility in which the Contractor is performing the work and to implement a "hotworks" safety program during the performance of their work. Hotworks is defined as use of any equipment or tools capable of producing heat and ignition sources sufficient to start fires or ignite explosives. The local Facility Manager or Safety Director shall be informed in advance of any hotworks necessary for the project. Safety precautions may include the removal or relocation of fire hazards, the provision of guards and fire

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blankets, coordination and verification of sprinkler systems and a fire watch that extends a minimum of 30 minutes past the conclusion of any hotworks.

.2 Safety Program: The Contractor shall implement and provide documentation on a Safety Program such as AWAIR (A Workplace Accident Injury Reduction Act) program and:

.1 Post Emergency phone numbers and procedures at the project site.
.2 Provide and Post the Contractor's Safety Director's name and phone number
.3 Provide and Post the Contractor's on-site safety representative's name, title and phone number
.4 Conduct weekly Safety Meetings during the performance of the contract and allow owner's safety representatives to be present during the Safety Meetings.

The owner assumes no obligation or liability for safety on the project site or legal and insurance requirements involving safety.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.3.1 In the event the owner, owner's representative, or architect observe an unsafe or hazardous condition on the project site, they shall have the right to stop work until such hazard or safety condition is remedied by the contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and comply with applicable regulations, laws pertaining to the storage, handling, use, transportation of explosives, hazardous materials or equipment.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 All Contractors shall fully comply with the requirements of Minnesota Statutes, Sections 326.70 through 326.81 and Minnesota Rules, parts 4620.3000 to 4620.3700.

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§ 10.3.3 Any Contractor who performs any asbestos-related work or asbestos management activity shall be licensed or certified by the Minnesota Commissioner of Health under Minnesota Statutes Sections 326.70 through 326.81, and shall perform such work or activity in accordance with rules prescribed by the Minnesota Commissioner of Health related to asbestos abatement and asbestos management activity. Without waiver of other provisions in this Article 10.3, the Contractor is not responsible for damages, costs, fines or penalties caused by the handling of pre-existing hazardous materials and substances, except to the extent of the contractor's fault or negligence in the handling of such substances.

§ 10.3.4 If there is a Contract involving existing construction, the Owner will provide to the Contractor an Asbestos Survey Report identifying the building materials containing asbestos. The Contractor shall read and understand the content of the Report and examine the site and facilities as necessary to develop a full understanding of the extent, location, quantity, and conditions of any potential asbestos containing material identified in the Report.

§ 10.3.5 Where potentially hazardous substances have been partially removed from any work area, either prior to or in conjunction with, the construction required under the asbestos abatement Contract, the Owner will provide to the Contractor a copy of the drawings, specifications, or other Documents which indicate the extent of removal work anticipated to be performed prior to the work of the Contractor. The Contractor shall review and fully understand the extent of the provided Documents and shall make appropriate inspections to ascertain that potential asbestos containing materials have been removed from affected work areas or that they have been encapsulated and will not pose a hazard to employees on the job site.

§ 10.3.6 All Contractors shall know and understand that where asbestos materials may have been partially or fully removed to facilitate the work of the Contractor, that such prior work is not a guarantee that all asbestos containing materials have been completely removed from all areas that might be affected by the work of the Contractor. The Contractor shall protect any asbestos materials that were left in place or that were not shown on the asbestos removal plans as scheduled to be removed.

§ 10.3.7 In responding for this project, the Contractor shall know and understand that it may encounter potential asbestos containing materials that may impede the progress of construction, require changes in the project schedule or changes in the sequences of work, or result in delays in completion. If such an event occurs, the Owner will grant a reasonable Contract time extension, but only if the Contractor could not reasonably have foreseen such conditions and could not reasonably adjust its project schedule to avoid any delays in completion.

§ 10.3.8 NOT USED

§ 10.3.9 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor or any tier of subcontractor unless such materials or substances were required by the Contract Documents.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S INSURANCE

§ 11.1.1 The Contractor shall

(Paragraphs deleted)

not commence work under the Contract until it has obtained all the insurance required by the specifications and such insurance has been approved by the State of Minnesota, Materials Management Division. All policies and certificates shall provide that the policies shall remain in force and effect throughout the term of the contract.

§ 11.1.2 COMMERCIAL GENERAL LIABILITY

§ 11.1.2.1 Contractor shall maintain insurance to cover claims arising from operations under this Contract, whether such operations are by the Contractor, Subcontractor, Sub-Subcontractor or by anyone directly or indirectly employed under this Contract. Unless otherwise specified, the insurance **minimum** limits of liability shall be as follows:

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$2,000,000 – Per Occurrence
$2,000,000 – Annual Aggregate applying per project or location
$2,000,000 – Annual Aggregate applying to Products and Completed Operations
$50,000 – Fire Damage (any one fire)
$5,000 – Medical Expense (any one person per occurrence)

§ 11.1.2.2 The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal Injury & Advertising Injury
- Products and Completed Operations Liability, to be maintained for at least 3 years after completion of the work under this contract.
- Contractual Liability as provided in ISO form CG 00 01 12 04 or its equivalent
- Pollution exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – CG 00 01 12 04 or equivalent
- Independent Contractors – Let or Sublet work
- Explosion, Collapse, and Underground (XCU) perils
- Broad Form PD
- Waiver of Subrogation in favor of the State of Minnesota

§ 11.1.2.3 Officers and Employees of the State of Minnesota, the Architect and its agents shall be named as Additional Insureds, by endorsement, ISO Forms CG 20 10 and CG 20 37 or their equivalent for claims arising out of the Contractor's negligence or the negligence of those for whom the Contractor is responsible.

§ 11.1.3 BUSINESS AUTOMOBILE LIABILITY

§ 11.1.3.1 Contractor shall maintain insurance to cover liability arising out of the operations, use, or maintenance of all owned, non-owned and hired vehicles. Unless otherwise specified, the insurance **minimum** limits shall be as follows:

$2,000,000 – Per Occurrence combined Single Limit Bodily Injury and Property Damage.

§ 11.1.3.2 The following coverages shall be included:

- Owned Automobiles
- Hired Automobiles
- Non-owned Automobiles
- Waiver of subrogation in favor of the State of Minnesota

§ 11.1.4 PROFESSIONAL LIABILITY – DESIGN ERRORS AND OMISSIONS

§ 11.1.4.1 If the Owner specifies that the Contractor provide design and related services and, pursuant to Section 3.12.10, the Contractor provides such services with its employees, the Contractor shall maintain insurance covering negligent acts, errors or omissions, arising out of the performance of, or the failure to perform, such professional services included in the Contract Documents. Additionally, the Contractor shall require its Architectural and Engineering consultants and their subconsultants, if any, to maintain professional liability insurance. All such insurance shall be maintained for a minimum of five (5) years, if commercially available, otherwise a minimum of three (3) years following completion or earlier termination of the Project. Unless otherwise specified, the insurance minimum shall be as follows:

§ 11.1.4.2 Minimum limit of liability of $2,000,000 per claim and $2,000,000 annual aggregate. Any deductible will be the sole responsibility of the Contractor and may not exceed $50,000 without the written approval of the Owner.

§ 11.1.4.3 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 Contract and Contractor shall maintain such insurance for a period of at least five (5) years, if commercially available, otherwise a minimum period of three (3) years, following completion or earlier termination of the Project. If such insurance is discontinued, extended reporting period coverage must be obtained to fulfill this requirement.

Evidence of insurance shall be filed with the Owner prior to start of design services if they are to be provided.

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§ 11.1.5 WORKERS' COMPENSATION

§ 11.1.5.1 Contractor shall provide workers' compensation insurance for all employees and shall require any Subcontractor to provide workers' compensation insurance in accordance with the statutory requirements of the State of Minnesota and must include:

a. Part 2, 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
   $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 State of Minnesota, as Owner.

§ 11.1.5.2 If Contractor is self-insured for its obligation under the Workers' Compensation Statutes in the jurisdiction where the project is located, a Certification of the Authority to Self-Insure such obligations shall be provided.

Evidence of Subcontractor insurance shall be filed with the Contractor.

§ 11.1.6 AVIATION AND/OR MARINE PUBLIC LIABILITY

§ 11.1.6.1 Should aircraft or watercraft of any kind be used by the Contractor, any tier of Subcontractor or by anyone else on their behalf, Contractor or Subcontractor shall maintain or cause the operator of the aircraft/watercraft to maintain aircraft/watercraft public liability insurance including bodily injury, property damage and passenger liability, as respects any aircraft/watercraft owned, used, operated or hired in connection with the work by the Contractor, Subcontractor or anyone else in the following limits:

§ 11.1.6.2 Aircraft/ Watercraft Liability - $10,000,000 Per Occurrence combined Single Limit Bodily Injury and Property Damage.

Evidence of insurance shall be filed with the Owner prior to use of equipment on project.

§ 11.1.7 UMBRELLA OR EXCESS LIABILITY

§ 11.1.7.1 The Contractor shall provide Umbrella or Excess Liability Insurance with limits of not less than $2,000,000 per occurrence and $2,000,000 aggregate and with coverage at least as broad as the primary coverages of Commercial General Liability, Employer's Liability and Automobile Liability set forth in Article 11 or use Umbrella or Excess Liability Insurance to supplement the primary policy limits to satisfy the full policy limits required by the Contract.

§ 11.1.8 ADDITIONAL INSURANCE CONDITIONS

§ 11.1.8.1 Primary and Non-Contributory - Contractor's policy(ies) shall be primary and non-contributory insurance to any other valid and collectible insurance available to the State of Minnesota or self-insurance maintained by the State of Minnesota with respect to any claim arising out of this Contract.

§ 11.1.8.2 Contractor is responsible for payment of contract related insurance premiums and deductibles.

§ 11.1.8.3 Insurance Companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.

§ 11.1.8.4 Insurance Companies waive their rights to assert the immunity of the State as a defense to any claims arising out of this Contract.

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

§ 11.1.8.6 Certificates of Insurance acceptable to the State of Minnesota shall be submitted prior to commencement of the work under this contract. If the Contractor receives a cancellation notice from an insurance carrier affording

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coverage herein, the Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless the Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be canceled without at least thirty (30) days advance written notice to the State of Minnesota.

§ 11.2 Owner's Liability Insurance: The Owner will be responsible for maintaining its own liability insurance or self insurance program and, at its option, may purchase and maintain such insurance as will protect the Owner against claims which may arise from operations under the Contract.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 BUILDER'S RISK – BY CONTRACTOR

The Contractor shall be responsible for providing and maintaining "All Risk" or equivalent Builder's Risk policy insuring the interest of the Owner, Contractor, and any tier of Subcontractor. Coverage on an "All Risk" or equivalent basis shall include the perils of flood, earthquake and pollution cleanup expense. Builder's Risk limit of liability shall be equal to the amount of the contract. Any deductible shall be the sole responsibility of the Contractor and shall not exceed $10,000 without the written approval of the Owner.

.1 The Builder's Risk policy will cover all materials, supplies and equipment that are intended for construction and specific installation in the project while such materials, supplies and equipment are located at the project site, in transit and while temporarily located away from the project site for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

.2 Any property not covered by the Builder's Risk policy, such as the Contractor's or any tier of Subcontractor's licensed motor vehicles or personal property, including job trailers, machinery, tools, equipment and property of a similar nature not destined to become a part of the project, shall be the responsibility of the Contractor or Subcontractor at any tier, and such person or organization may self insure or provide other insurance at its option for the same.

.3 Waiver of Liability: Absent Owner or Architect sole negligence or breach of specific Contractual duty specifically and logically related to the damage or loss, the Owner or Architect will not be responsible for loss or damage to property of any kind owned, borrowed, rented or leased by the Contractor, Subcontractors of all tiers and/or the Contractor's/Subcontractors employees, servants or agents.

.4 Waivers of Subrogation: The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors of all tiers and (2) the Architect, and the Architect's Subcontractors of all tiers for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the provisions of paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner or Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, and the Architect's Subcontractors of all tiers, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

.5 All losses and claims shall be immediately reported to the Contractor, Owner and applicable insurance carrier, under loss notice procedures as directed by the Contractor.

.6 Any loss insured under Section 11.3 is to be adjusted with the Contractor and made payable to the Contractor as trustee for all insured parties, as their interests may appear, subject to the requirements of any applicable mortgage clause. The Contractor shall pay the Owner a just share of any insurance moneys received, and by appropriate agreement, written where legally required for validity, shall require the Contractor to make just share payments to the Subcontractors and lower tiered Sub-Subcontractors in similar manner.

.7 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise.

.8 Boiler and Machinery Insurance. The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owners, Contractor, Subcontractors and Sub-Subcontractors in the Work, and the Owner and Contractor shall be named insureds.

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.9 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ 11.3.1 BUILDER'S RISK – BY OWNER

If required by the Contract, the Owner shall be responsible for providing and maintaining "All Risk" or equivalent Builder's Risk policy insuring the interest of the Owner, Contractor, and any tier of Subcontractor. Coverage on an "All Risk" or equivalent basis shall include the perils of flood, earthquake and pollution cleanup expense.

.1 The Builder's Risk policy will cover all materials, supplies, and equipment that are intended for construction and specific installation in the project while such materials, supplies and equipment are located at the project site, in transit, and while temporarily located away from the project site for the purpose of repair, adjustment, or storage at the risk of one of the insured parties.

.2 Any property not covered by the Builder's Risk policy, such as the Contractor's or any tier Subcontractor's licensed motor vehicles or personal property, including job trailers, machinery, tools, equipment and property of a similar nature not destined to become a part of the project, shall be the responsibility of the Contractor or Subcontractor at any tier, and such person or organization may self insure or provide other insurance at its option for the same.

.3 Waiver of Liability: Absent Owner or Architect sole negligence or breach of specific Contractual duty specifically and logically related to the damage or loss, the Owner or Architect will not be responsible for loss or damage to property of any kind owned, borrowed, rented or leased by the Contractor, Subcontractors of all tiers and/or the Contractor's/Subcontractors employees, servants or agents.

.4 Waivers of Subrogation: The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors of all tiers and (2) the Architect, and the Architect's Subcontractors of all tiers for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the provisions of paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner or Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, and the Architect's Subcontractors of all tiers, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

.5 Duties in the Event of Loss or Damage:

1. The Contractor shall notify the police if a law may have been broken.
2. All losses and claims shall be immediately reported by the Contractor to the Owner and applicable insurance carrier, including a description of the property involved.
3. As soon as possible, the Contractor shall give the Owner a description of how, when and where the loss or damage occurred.
4. The Contractor shall take all reasonable steps to protect the property from further damage, and keep a record of the expenses incurred to protect the property, for consideration in the settlement of the claim. This will not increase the limit of insurance. The Owner will not pay for any subsequent loss or damage that is not due to a covered cause of loss. If feasible, the Contractor shall set the damaged property aside and in the best possible order for examination.
5. The Contractor shall provide the Owner, at the Owners request, complete inventories of the damaged and undamaged property, including quantities, costs, values and the amount of loss claimed.
6. As often as may be reasonably required, the Contractor shall permit the Owner to inspect the property to prove the loss or damage, and to examine the Contractor's books and records that are relevant to the claim. Also, the Contractor shall permit the Owner to take samples of damaged and undamaged property for inspection, testing and analysis, and permit the Owner to make copies from the Contractor's books and records that are applicable to the claim.
7. The Contactor shall send the Owner a signed, sworn proof of loss within 60 days of the Owners request using the Owner's forms. The proof of loss shall contain information the Owner requests to investigate the claim.
8. The Contractor shall cooperate with the Owner in the investigation or settlement of the claim.

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9. The Owner may examine the Contractor under oath, at such times as may be reasonably required, about any matter relating to this insurance or the claim, including the Contractor's books and records that are relevant to the claim. In the event of an examination, the Contractor's answers must be signed.

.6 Any loss insured under Section 11.3 is to be adjusted with the Owner and made payable to the Owner as trustee for all insured parties, as their interests may appear, subject to the requirements of any applicable mortgage clause. The Owner shall pay the Contractor a just share of any insurance moneys received by the Owner, and by appropriate agreement, written where legally required for validity, shall require the Contractor to make payments to the Subcontractors and lower tiered Sub-Subcontractors in similar manner.

.7 The property insurance provided by Owner under this Section 11.3 is subject to a deductible. The Contractor shall be responsible for payment of the first $5,000 of such deductible on each and every loss occurrence. The Contractor may self insure or obtain insurance to cover its responsibility, at its option. The Owner will be responsible for the amount of any loss occurrence in excess of the deductible amount, up to the Builder's Risk policy limit as it may be applied to any loss under the Contract.

.8 When Coverage Ceases:
The insurance provided by the Owner's policy will end when one of the following first occurs:

a. The coverage expires or is cancelled;
b. The property is accepted by the purchaser;
c. The Contractors interest in the property ceases;
d. The Contractor abandons the construction with no intention to complete it;
e. Unless the Owner specifies otherwise in writing:
   1. 90 days after construction is complete; or
   2. 60 days after the insured property is:
      a. Occupied in whole or in part; or
      b. Put to its intended use.

.9 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owners, Contractor, Subcontractors and Sub-Subcontractors in the Work, and the Owner and Contractor shall be named insureds.

.10 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ 11.3.1 BUILDER'S RISK – NOT REQUIRED

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Unless otherwise exempted in these Contract Documents, the Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond (individually a "Bond" and collectively "Bonds") to the Owner. The Performance Bond shall be in an amount equal to 100% of the full amount of the Contract sum as security for the faithful performance of the Contract, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Contract sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such Bonds shall be on forms approved by or provided by the Owner and shall name the Owner as primary Obligee.

§ 11.4.2 The surety issuing the Bonds shall be satisfactory to the Owner, be licensed to issue Bonds in the State of Minnesota, shall be rated by A.M. Best an A-(minus) or better, and shall be within the limit set by the Treasury Department as the net limit on any single risk for the surety, or if co-sureties are utilized, the amount of each Bond shall be within the total of such limits set for a surety and any such co-sureties. There shall be no affiliation between the Contractor and any bonding agencies or agent used.

§ 11.4.3 In the event of change orders that result in an increase in the Contract Sum, the penal sum of each Bond shall increase in the amount of such change in the Contract sum without obtaining the surety's consent up to a maximum of 10% of the penal sum. Any aggregate increase in the excess of 10% of the original penal sum shall require the surety's

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written consent. The Contractor shall be responsible for getting the consent, and shall submit a copy of such consent to the Owner.

§ 11.4.4 If the Owner determines that the surety providing the bonds no longer meets the requirements of Section 11.4.2, the Contractor shall obtain an adequate replacement surety that will provide acceptable bonds in the same form and amount as the bonds issued by the original surety. The Contractor shall pay the premium(s) on such new Bond(s). The Contractor acknowledges that further payments to the Contractor may not be made until the new surety has been qualified and approved.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. The costs of corrections include labor, material, equipment, safety precautions in accordance with the Contract Documents.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties or special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Notice of discovery and required correction may be given by either the Owner or the Architect.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed and accepted after Substantial Completion by the period of time between Substantial Completion and the actual completion and acceptance of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 The Contract Documents survive final payment and are applicable to the performance of all corrective work required, regardless of time.

§ 12.2.7 The obligation of the Contactor to perform corrective work shall survive final completion of the work and final payment under the Contract.

§ 12.2.8 The Owner does not waive any remedies for the cost of performing corrective work the Contractor neglects or refuses to perform in a timely manner.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If the Owner chooses to accept nonconforming work pursuant to this provision, then the Contractor shall warrant the accepted work for the period stated in Section 12.2 as amended. The adjusted Contract Sum, when determined after final payment, shall be reimbursed to the Owner by the Contractor.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The laws of the State of Minnesota shall govern the Contract and the venue for any claims or actions shall be Ramsey County, Minnesota.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 NOT USED

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Normal communication between parties may be by US Mail, email or fax.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public

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authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.1.1 The requirements of 13.5.1 may be superseded by the project General Requirements, and by project specifications providing for the Owner to obtain and pay for specific testing and special inspections. Tests and inspections otherwise required by codes, laws, ordinances, rules or regulations of any authority having jurisdiction over the project shall be provided and paid for by the Contractor using entities acceptable to said authority. The Contractor shall schedule all tests and inspections with the providing party so as not to delay the project.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 NOT USED

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 ASSIGNMENT OF ANTITRUST CLAIMS

§ 13.8.1 The Contractor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and materials purchased in connection with this order or Contract resulting from antitrust violations which arise under the antitrust laws of the State of Minnesota. In addition, Contractor warrants and represents that each of their first tier suppliers and Subcontractors shall assign any and all such claims to the State of Minnesota. By signing the Solicitation, the Contractor agrees with the following statement:

.1 I/We certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a solicitation response; that this solicitation response has been independently arrived at without collusion with any other vendor, competitor, or potential competitor; that this solicitation response has not been knowingly disclosed prior to the opening of solicitation responses of any

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other vendor or competitor; and that the above statement is accurate under penalty of perjury.

§ 13.9 RECYCLING

§ 13.9.1 In accord with the State of Minnesota's sustainability guidelines, it is in the best interest of the State that scrap, waste and demolished materials be recycled. All Contractors, to the extent commercially available, are required to recycle recyclable scrap materials generated on State of Minnesota building projects. A recycling plan may be required by the General Requirements and Specifications. If the Owner discovers that the Contractor is not utilizing commercially available recycling the project may be stopped until recycling provisions are implemented by the Contractor. When waste and demolished materials contain or are suspected of containing legally defined hazardous compounds, legal and proper disposal by qualified and licensed personnel is required.

§ 13.10 RECORDS

§ 13.10.1 The books, records, documents, bid preparation documents, and accounting procedures and practices of the Contractor and its employees, agent, or subcontractors relevant to the Contract must be made available to and subject to examination by the Owner, Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the contract. The Contractor shall maintain all documentation, at its expense, in the event of a claim giving rise to a litigation hold order.

§ 13.11 GOVERNMENT DATA PRACTICES ACT

§ 13.11.1 The Contractor and the Owner must comply with the Minnesota Government Data Practices Act, Minn. Statute Ch 13, as it applies to all data provided by the Owner, and as it applies to all data created collected, received, stored, used, maintained or disseminated by the Contractor under this Contract. The civil remedies of Minn. Statute 13.08 apply to the release of all data by either the Contractor or the Owner.

§ 13.11.2 If the Contractor receives a request to release data, the Contractor must immediately notify the Owner before releasing any data. The Owner will give the Contractor instructions concerning the release of the data to the requesting party.

§ 13.13 LABOR AND WAGES NONDESCRIMINATION

§ 13.13.1 The Contract shall conform with and agree to provisions of Minnesota Statutes section 181.59 that prohibits discrimination in the hiring of labor by reason of race, creed or color, which section is reproduced below:

§ 13.13.2 181.59 DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT. Every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district, or any other district in the State, for materials, supplies or construction shall contain provisions by which the Contractor agrees:

.1 That, in hiring of common or skilled labor for the performance of any work under any Contract, or any subcontract, no Contractor, Material Supplier, or Vendor shall, by reason of race, creed, or color discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

.2 That no Contractor, Material Supplier, or Vendor shall, in any manner, discriminate against or intimidate, or prevent the employment of any person or persons identified in the clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any Contract on account of race, creed, or color;

.3 That a violation of this Section is a misdemeanor; and

.4 That this Contract may be canceled or terminated by the State, county, city, town, school board, or any other person authorized to grant the Contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms and conditions of this Contract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

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.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
.3 **NOT USED**
.4 **NOT USED**

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 NOT USED

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
.5 files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of commencement of same, makes an assignment for the benefit of its creditors, has a receiver appointed to manage the Contractor's assets or otherwise is becoming insolvent; or
.6 materially fails to comply with interim or final completion dates as required by the Contract Documents, or materially fails to comply with design requirements of the Contract Documents, or persistently fails to perform the work in accordance with the Contract Documents.
.7 fails to maintain the required insurance.

§ 14.2.2 When any of the above reasons exist, the Owner, may by giving the Contractor and the Contractor's surety, if any, written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
.2 Accept assignment of subcontracts pursuant to Section 5.4; and
.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum the direct and indirect consequential costs of completing the Work, including but not limited to fees and charges of Architects, Engineers, Attorneys, other professionals and court costs,, and other damages incurred by the Owner, such excess will be paid to the Contractor. If such costs and damages exceed such unpaid balance, the Contractor shall pay the difference to the Owner. Such costs incurred by the Owner will be approved as to reasonableness by the Owner, but when exercising any rights or remedies under this article, the Owner shall not be required to obtain the lowest price for the work performed. This obligation for payment shall survive termination of the Contract, final completion of work and final payment.

§14.2.5 If a court determines that the termination was not supported by at least one of the reasons stated in Section 14.2.1, the termination shall be deemed a termination for the Owner's convenience and be governed by Section 14.4.

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§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination. The Contractor may not recover Overhead and Profit for Work not performed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Arbitration and Mediation, mandated or otherwise required, as a method of dispute and/or claim resolution, wherever referenced in Article 15, do not apply to this Contract or any Contract with the State of Minnesota. This Article 15 is modified to exclude all references to arbitration and mediation and to substitute the following:

The Contractor and the State may exercise those legal remedies in District Court as may be available to them in connection with any dispute arising out of this agreement which cannot be settled by the parties.

In case any question, dispute or controversy arises between the Contractor and Owner, or Contractors separately employed by the State, such dispute or controversy shall be referred to the Commissioner of Administration or the Commissioner of Administration's designee.

The venue of any proceedings is herein agreed to be Ramsey County, State of Minnesota, unless otherwise specifically agreed.

The Contractor shall carry on the work and maintain the progress schedule during any proceedings or disputes, unless otherwise instructed by the Owner in writing.

§ 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be initiated by written notice to the Owner with a copy sent to the Architect. Claims must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. For purposes of this section, communication regarding contractor's claims may be communicated by the Owner, Architect, Owner's Representative or other agent of the Owner acting on behalf of the owner.

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Claims not initiated by the contractor within 21 days after occurrence of the event giving rise to such claim or within 21 days after the contractor first recognizes the condition giving rise to the claim are waived.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Owner.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction, in accordance with Section 8.3.2.4.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraphs deleted)

Waiver of Consequential Damages is NOT USED. The Owner reserves the right to invoke consequential damages as an additional remedy for the Owner.

§ 15.1.7 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

If conditions are encountered at the site which are (1) subsurface or otherwise fully concealed physical conditions which differ materially from those affirmatively indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that could not have been anticipated and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents (3) are not observable prior to bidding or inferable by the type of construction, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. If notice is not given by the Contractor within 21 days after first observance of the condition, all claims by the contractor that arise from the condition are waived. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 15.2 INITIAL DECISION – NOT USED

§ 15.2.1 NOT USED

§ 15.2.2 NOT USED

§ 15.2.3 NOT USED

§ 15.2.4 NOT USED

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§ 15.2.5 NOT USED

§ 15.2.6 NOT USED

§ 15.2.6.1 NOT USED

§ 15.2.7 NOT USED

§ 15.2.8 NOT USED

§ 15.2.9 Arbitration and Mediation as a method of dispute resolution, wherever referenced in Article 15 or elsewhere in the Contract Documents, do not apply to this Contract. Any unresolved issue, dispute or controversy arising between the Contractor and Owner, Architects, or Contractors separately employed by the Owner shall first be referred to the Commissioner of Administration or its designated representative

§ 15.2.10 The Contractor and Owner may exercise those legal remedies in District Court as may be available to them in connection with any dispute arising out of this agreement which cannot be settled by the parties subject to the conditions in Section 13.7.

The venue of any proceedings shall be Ramsey County, State of Minnesota, unless otherwise agreed in writing.

The Contractor and Subcontractors shall carry on the work and maintain the progress schedule during any proceedings, unless otherwise instructed by the Owner in writing.

§ 15.3 MEDIATION – NOT USED
§ 15.3.1 NOT USED

§ 15.3.2 NOT USED

§ 15.3.3 NOT USED

§ 15.4 ARBITRATION - NOT USED
§ 15.4.1 NOT USED

§ 15.4.1.1 NOT USED

§ 15.4.2 NOT USED

§ 15.4.3 NOT USED

§ 15.4.4 CONSOLIDATION OR JOINDER - NOT USED
§ 15.4.4.1 NOT USED

§ 15.4.4.2 NOT USED

§ 15.4.4.3 NOT USED

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Guaranteed Energy Savings Program
Master Contract – Attachment 3

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State of Minnesota
Department of Commerce

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~~(Topics and numbers in bold are section headings.)~~(Numbers and Topics in Bold are Section Headings)

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The Contract Documents ~~are enumerated in~~ (hereinafter Contract, Contract Documents or Agreement) consist of the Agreement between the Owner and ~~Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to~~

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~~execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.~~Contractor, the Payment and Performance Bond, the Corporate Acknowledgement or Individual and Co partnership Acknowledgement, or Limited Liability Acknowledgement, the General, Supplementary and Special Conditions of the Contract, drawings, specifications, bidding documents, addenda, other documents listed in the Agreement, and modifications issued and duly authorized after execution of the agreements.

.1.a. For purposes of this document, the term "Architect" shall mean "Architect or Engineer of Record.

.1.b. For purposes of this document the term "Change Order" shall be shall be defined as "Supplemental Agreement"..

...

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

...

§ 1.1.7.1. The Project Manual is a volume assembled for the Work which includes bidding requirements, sample forms, General Conditions of the Contract and Specifications or other Instruments of Service.

§ 1.1.8 INITIAL DECISION MAKER – NOT USED

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.~~

§ 1.1.9 BIDDING DOCUMENTS

The Bidding Documents are the advertisement for bids, thee instructions to bidders, sample forms, the Contractor's bid and addenda relating to any of these.

§1.1.10 ADDENDUM OR ADDENDA

The addendum or addenda are any written changes, bulletins, revisions or clarifications of the Contract Documents which have been duly issued by the Architect to prospective bidders prior to the time of the Owner receiving bid proposals.

§1.1.11 MODIFICATION

A modification is (1) a Change Order (Supplemental Agreement), (2) a Construction Change Directive, (3) or a written order for a minor change in the work issued by the Architect pursuant to Article 7.4.

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of an inconsistency between the drawings and specifications, or within either, where the inconsistency is not clarified by addendum, the better quality or greater quantity of work shall be required as determined by the Architect.

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Addenda and modifications of the Contract Documents, as defined in Section 1.1.10 and 1.1.11 shall take precedence over the original Contract Documents.

...

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~Any and all documents produced for the State become the property of the State and the State therefore maintains any copyright on these documents. The Contract Documents, in whole or in part, and copies thereof, are to be used by the Contractor only in respect to this project and shall not be used by the Contractor for any other purpose.

...

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall ~~endeavor to~~ establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 USE OF STATE PROJECT MANAGEMENT SOFTWARE

The Owner may, at its sole option, direct the Architect, Construction Manager, Contractor (as applicable), and/or other Project participants to utilize the internet-based Project Management Software selected by the Owner. The functionality of this software may include, but is not limited to, the processing of the Plan Reviews, Purchase Orders, Change Orders, Payment Applications, Requests for Information, and Document and Schedule Management related to the Project.

If the Owner chooses to utilize Project Management Software selected by the Owner, the Owner will provide or arrange for a login license for the applicable parties, at no cost to the applicable parties.

The Owner will provide or arrange for initial software training to the applicable parties. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of the software by the applicable parties.

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§ 2.1.1 The ~~Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~terms "Owner", "State", or "State of Minnesota" wherever they appear in the Contract Documents is the State of Minnesota. The authorized representative for the State of Minnesota is the Commissioner of Commerce or his/her representative..

§ 2.1.2 ~~The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~**NOT USED**

...

§ 2.2.1 ~~Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the~~

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~~Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~ **NOT USED**

...

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the ~~site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~site and any other information it has available. Within 20 days of receipt, the Contractor is required to review any materials (such as surveys, soil tests, existing structures or conditions, locations of utilities, etc) furnished by the Owner, and notify the Owner of the discovery of any inaccuracy. The furnishing of this material by the Owner shall not relieve the Contractor of its responsibilities under the Contract Documents. The Owner will provide any information required by the Contract Documents reasonably necessary to execute the work. The Owner makes no representations, warranties or guarantees as to the accuracy of information provided to the contractor.

...

§ 2.2.6 Security features of building plans, specifications, and drawings of state owned facilities and non-state owned facilities leased by the state are classified as nonpublic data when maintained by the Department of Administration and may be shared with anyone as needed to perform duties of the commissioner. However, consultants and contractors shall not release these plans and specifications to anyone without the Owner's approval.

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If the Contractor ~~defaults~~ fails or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such ~~default~~ failure or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and~~ The amounts charged to the Contractor are ~~both~~ subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Article 15, Claims and Disputes does not apply to a request by the Owner that the Architect approve the use of the remedy provided in Section 2.4.

§2.5 OWNER'S USE OF THE PROJECT

The Owner shall have the right to take possession of and use completed or partially completed portions of the work even though the time of completing the entire work, or such portion thereof, may not have expired, and such use shall not constitute acceptance thereof. The Owner's possession will not interfere with the Contractor's work. The Owner may engage in move-in activities such as furniture installation but will not physically occupy the work until such work is accepted by, and occupancy permit is issued by, the code jurisdiction of authority.

...

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall not perform any work unless and until the Contractor is in compliance with Article 3.11.1 -Documents and Samples at the Site.

§ 3.1.3 The Contractor, when requested by the Architect, shall meet with the Architect and the Architect's representative and consultants, at reasonable times and furnish all information requested. The Contractor shall allow the Architect, the Architect's representatives and consultants full access to the work to facilitate inspection of the Work. Neither the Owner nor Architect shall be liable to the Contractor for extra compensation or damages for interference or delays on account of any meeting, and, the supply of information, tests or inspections. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by

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activities or duties of ~~the Architect~~ the Owner, the Architect, in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by the Owner, the Architect, or persons or entities other than the Contractor. Claims may be made in accordance with Article 15 of the AIA A201.

§ 3.1.4 The contractor shall employ and/or subcontract with subcontractors that are qualified to successfully complete the Work indicated in the Contract Documents and within the contract time specified.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor ~~shall, before~~ shall make every effort to identify inconsistencies that may exist. Before starting each portion of the Work, carefully study and compare the ~~various~~ Drawings, Specifications, Addenda and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, and shall observe and take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. ~~These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report~~ The Contractor shall promptly report in writing to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Architect will respond pursuant to Sections 4.2.11 and 4.2.12. The Contractor shall not start any portion of the Work if uncertain about the meaning or intent of the Contract Documents. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 ~~The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.~~If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2, 3.2.3 and 3.2.5, the Contractor shall make claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 and 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

§ 3.2.4 ~~If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~The Contractor shall be responsible for accurately staking new work on the site, and shall run the axis lines locating the work, establish correct datum points, and check each line and point on the site to ensure accuracy. All such lines and points shall be carefully preserved throughout construction. The Contractor shall (1) lay out all work from dimensions given on drawings, (2) take measurements and verify dimensions of existing or old work, if any, that affect the work or to which its work is to be fitted, (3) be responsible for the correctness of all measurements and shall verify all grades, lines, levels, elevations and dimensions shown on the drawings, and (4) report any errors or inconsistencies to the Architect prior to commencing work in the form as the Architect may require.

§ 3.2.5 No Change to the Contract Sum will be allowed on account of minor differences between actual field conditions and the Contract Documents. A minor difference is defined as a requirement in the contract documents that is not materially different from the actual field condition(s).

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences

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and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. ~~If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.~~ The Owner or the Architect, shall be responsible for damages arising from the Owner, or the Architect, respectively, for knowingly directing the Contractor to perform unsafe work. Nothing in this Section 3.3.1 shall be construed as limiting any claims the Owner or Contractor may have against the Architect for any such loss or damages.

...

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents specifically require work to be performed beyond normal working hours, weekends or holidays, or should the completion time require work to be performed at said times, or, should the Contractor elect to perform work at said times, with the permission of the Owner, any additional costs resulting from working at said times are the Contractor's sole responsibility.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making a request for a substitution, the Contractor:

.1 Represents that the Contractor has personally investigated the proposed substitute item, material and/or process, and determined that it is equal or superior in all respects to that specified.

.2 Represents that the Contractor will provide the same or better warranty for the substitute item than that provided with the specified item.

.3 Certifies that the cost data presented at the time of the request is complete and includes all related costs under this contract, including the Architect's review and redesign costs, and waives all other claims for additional costs related to the substitution that are not presented with the request.

.4 Will coordinate the installation of the accepted substitute, implementing minor changes that are required for the work to be completed, in accordance with Article 7.4

The above representations, certifications and agreement to coordinate do not obligate the Owner to consent to the substitution. Owner consent to the substitution does not constitute approval of the cost data submitted, unless the cost data is specifically approved in writing.

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§ 3.4.4 HAZARDOUS MATERIALS BANNED

§ 3.4.4.1 PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED.

Contractor certifies that it has read and will comply with Laws of Minnesota, 2007, Chapter 57 (to be codified at Minn. Stat. §§ 325E.385-325E.388) as provided below.

§ 3.4.4.2 ASBESTOS CONTAINING MATERIALS BANNED

No asbestos containing materials shall be brought on the project site, installed on the project, or used in the installation of Work for the project. See Section 10.3 – Hazardous Materials.

§ 3.4.4.3 RESTRICTIONS ON PURCHASING AND USE OF UNDILUTED COAL TAR SEALERS

Undiluted coal tar sealers will not be used on the project. Undiluted coal tar sealers are defined as any sealant containing coal tar that has not been mixed with asphalt and is intended for use on asphalt surfaces, including driveways and parking lots. See the 2009 MN Statutes §116.201.

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§ 3.4.5 RECYCLING AND WASTE MANAGEMENT

For all State bonded construction, renovation, or demolition projects costing $5,000,000.00 or greater that are located within 40 miles of a construction and demolition waste recycling facility, the Contractor and any subcontractors must divert from deposit in a landfill and must recycle at least 50 percent of the nonhazardous construction and demolition waste, measured by tonnage or volume, produced by the project or demonstrate that the waste was delivered to construction and demolition waste recycling facilities that maintain a 50 percent annual recycling rate. The Contractor shall submit a Waste Management and Recycling Program Plan for these projects to the Architect who shall review and submit it to the State for final approval. If the project plans and specifications for the project carry a more stringent requirement for recycling as it applies to quantity recycled, project cost, project funding source, or haul distance to a recycling facility, the more stringent requirement will apply.

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of ~~good~~ specified or superior quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty is not limited by the provisions of Section 12.2. Guarantees required by the Contract Documents shall not exclude or otherwise limit the Owner's possible remedies at law and shall not be construed as a waiver by the Owner of any other remedy.

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§ 3.7

~~PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS~~PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are ~~received or negotiations concluded.~~received. **All such fees, including sewer and water access charges, Minnesota Pollution Control Agency general storm water permits, and Federal Water Permits, park fees, shall be paid by the Contractor and failure to account for all such charges shall not increase the Contract Sum unless allowances were identified in the construction documents.** Total fees charged for a Building Permit may not exceed the amount prescribed in the latest edition of the Minnesota State Building Code. Procurement of permits does not relieve the Contractor of the requirement for complying with the Contract Documents that exceed the requirement of governing laws, ordinances and statutes.

§3.7.1.1 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

(NPDES) PERMIT. Pollution of natural resources of air, land and water by operations under this Contract shall be prevented, controlled, and abated in accordance with the rules, regulations, and standards adopted and established by the Minnesota Pollution Control Agency (M.P.C.A.) and the following:

.1 By signing the Contract and completing the NPDES permit application, the Contractor is a co-permitee with the Owner to ensure compliance with the terms and conditions of the General Storm Water Permit for Construction Activity (MN R100001) and is responsible for those portions of the permit where the operator is referenced. This Permit establishes conditions for discharging storm water to waters of the State from construction activities disturbing one acre or more of total land area. A copy of the "General Permit Authorization to Discharge Storm Water Associated with a Construction Activity Under the National Pollutant Discharge Elimination System (NPDES)/State Disposal System Permit Program" is available at:

http://www.pca.state.mn.us/index.php/water/water-types-and-programs/stormwater/construction-stormwater/construction-stormwater.html

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.2 The Contractor shall apply and pay for the NPDES Permit on this Project. Payment for the application shall be incidental to the Contract and no direct compensation will be made. The Owner will provide the Contractor information on how to complete the Owner's portion.

.3 No work which disturbs soil and/or work in waters of the state will be allowed on this Project until the NPDES Permit is in effect and the department has received the required documentation.

.4 The Contractor shall be solely responsible for complying with the requirements listed in Part II.B and Part IV of the General Permit.

.5 The Contractor shall be responsible for providing all inspections, documentation, record keeping, maintenance, remedial actions, and repairs required by the permit. All inspections, maintenance, and records required in the General Permit Paragraph IV.E, shall be the sole responsibility of the Contractor. The word "Permitee" in these referenced paragraphs shall mean "Contractor". Standard forms for logging all required inspection and maintenance activities shall be used by the Contractor. All inspection and maintenance forms used on this Project shall be turned over to the Architect/Engineer every two weeks for retention in accordance with the permit.

.6 The Contractor shall have all logs, documentation, inspection reports on site for the Architect/Engineer's review and shall post the permit and MPCA's letter of coverage on site. Meetings with the MPCA, Watershed District, WMO, or any local authority shall be attended by both the Architect/Engineer and the Contractor or their representatives; the Contractor and/or the Architect/Engineer shall contact the Owner prior to a scheduled meeting. No work required by said entities, and for which the Contractor would request additional compensation from the Owner, shall be started without approval from the Architect/Engineer. No work required by said entities and for which the changes will impact the design or requirements of the Contract documents shall be started without approval from the Engineer.

.7 The Contractor shall immediately notify the Engineer of any site visits by Local Permitting Authorities performed in accordance with Part V.H.

.8 Emergency Best Management Practices must be enacted to help minimize turbidity of surface waters and relieve runoff from extreme weather events. It is required to notify the MPCA Regional contact person within 2 days of an uncontrolled storm water release.

.9 The names and phone numbers of the MPCA Regional Contact personnel can be found at: http://www.pca.state.mn.us/water/stormwater/stormwater-c.html. The Contractor is reminded, during emergency situations involving uncontrolled storm water releases that the State Duty Office must be contacted immediately at 1-800-422-0798 or 1-651-649-5451.

.10 The Contractor shall review and abide by the instructions contained in the permit package. The contractor shall hold the Owner harmless for any fines or sanctions caused by the Contractor's actions or inactions regarding compliance with the permit or erosion control provisions of the Contract Documents.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Except in those Municipalities that provide State-approved electrical inspection, all installation of electrical work shall be inspected by the Minnesota Board of Electricity. The Contractor shall procure and pay for all required electrical inspections.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. This requirement does not relieve the Contractor of the responsibility for complying with the Contract Documents if the Contract Documents requirements exceed those of governing codes and regulations.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those affirmatively indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that could not have been anticipated and which

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differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, or (3) are not observable prior to bidding or inferable by the type of construction, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those affirmatively indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, or archaeological sites ~~or wetlands~~ not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15. Additionally, Contractors shall comply with Minnesota Statute 307.08

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

...

.3 ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall communicate with the Owner through the Architect.

...

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The superintendent shall be assigned continuously to the work from Notice to Proceed until Final Completion. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or ~~delayed.~~ delayed, and, the Contractor shall not change the Superintendent unless the Superintendent ceases to be employed by the Contractor."

...

§ 3.10.1 The Contractor, ~~promptly after being awarded the Contract,~~ no later than ten (10) days following the date on which the Contractor received written notice to proceed from the Owner, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

...

§3.10.4 The schedule submitted by the Contractor shall have a completion date that corresponds to the completion date set forth in the Contract Documents. The Contractor is responsible for meeting this schedule without any adjustment to the Contract Sum, and by executing the Contract, the Contractor confirms that it is capable of properly completing the work within the completion date set forth in the Contract Documents."

§3.10.5 The Contractor must provide a minimum of five working days prior notice for specified testing or inspections that are to be performed by the Owner or Separate Contractors. Such testing and inspections shall be included in the Contractor's schedule."

§3.10.6 If the Contractor, Architect, or Owner determines at any time, and for any reason, that the work has fallen fifteen (15) calendar days or ten (10) working days, behind the scheduled contract time, milestone date, phased work completion date, critical path date, or work indicated on the latest submitted schedule, the Contractor shall submit a Recovery Schedule within seven (7) calendar days of the Architect's written request or date the Contractor has knowledge that the work has fallen behind. The Contractor shall also submit a Recovery Plan indicating actions to be taken to recover the schedule. The Recovery Plan shall document the following:

.1 Description of work that is behind schedule
.2 Reason for work being behind schedule. If the Contractor claims that the delay is due to an event or condition that was outside the Contractor's ability to control, the Contractor shall include all documentation sufficient to justify the delay in accordance with Articles 8.3.1, 8.3.2, and 8.3.3.
.3 Identification of all resources necessary to recover the schedule including all materials, labor, equipment and changes in operations.
.4 Detail of all additional resources necessary to recover the schedule including, but not limited to additional quantities of manpower, overtime, increased number of hours per day, increased number of work shifts per day, increased number of work days per week.
.5 Duration of time necessary to Recover the Schedule.

The Contractor shall implement the Recovery Plan and recover the schedule at no cost to the owner and no additional contract time unless the claim is substantiated and approved in accordance with Section 8.3 and Article 15.

A breach and default of contract shall result from the Contractor's failure to provide the Architect and Owner with the Recovery Plan and Recovery Schedule and/or failure to implement the Recovery Plan.

Should the Contractor claim and provide sufficient documentation to substantiate that the delay was beyond the control of the Contractor the Owner shall reserve the right, in its best interest, to determine if the Recovery Plan and Schedule shall be implemented.

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

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§ 3.14.1 The Contractor ~~shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching~~ is responsible for all cutting, patching, drilling, fastening, anchoring of all new and existing construction required to complete the work. All areas shall be restored to the condition existing prior to the cutting, ~~fitting and patching,~~ patching, drilling, fastening, anchoring, and fitting unless otherwise required by the Contract Documents.

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§ 3.15.2 ~~If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.~~The cost of cleanup performed by the Owner as a result of the Contractor's failure to provide the cleanup required by the Contract Documents, shall be deducted from the Contract Sum.

...

The Contractor shall provide the ~~Owner and Architect access to the Work in preparation and progress wherever located.~~Owner, Architect, their consultants, other persons authorized by the Owner and Authorities having jurisdiction over the work, access at all times to the project site and to Work in progress, in preparation or completed. The Contractor shall provide safe and proper facilities for such access and for testing, inspections and separate Contracts and shall secure and protect samples and testing equipment.

...

§ 3.18.1 To the fullest extent permitted by ~~law~~ law, and in accordance with Article 11, the Contractor shall indemnify and hold harmless the Owner, Owners' Representatives, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18.

...

§3.18.3 The obligations of the Contractor under this Section 3.18 shall not negate, abridge or reduce the liability of the Architect, the Architect's consultants and agents and employees of any of them.

...

§ 4.1.1 The ~~Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.~~ term or word "Architect" or "Architect of Record" used in the Contract Documents shall mean Architect, Engineer, Designer, or other person or entity designated by the Owner to perform the Architect's role required by the Contract Documents.

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

§ 4.1.3 If the ~~employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~Architect of record for the Contract is no longer employed by the Owner or is otherwise unable to fulfill the

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required obligations of the Contract, the Owner shall designate a responsible party to fulfill the obligations under the Contract. The Owner reserves the right to designate itself.

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§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the ~~Architect issues the final Certificate for Payment.~~ final payment is due. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

...

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. However, where the Architect observes deficiencies in the Work, or where the Architect observes the Contractor or Subcontractor failing to execute the work in accordance with the Contract Documents, the Architect shall, within 24 hours, notify the Contractor and Owner, in writing, of all such deficiencies. The Architect shall promptly notify the Owner when, in the Architect's opinion, the work should be stopped. Authority to stop the work shall rest with the Owner.

§ 4.2.4 ~~COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION~~
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Owner may communicate directly with the Contractor and Subcontractors and advise the Architect of those communications.

§ 4.2.5 Based on ~~the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.~~project site observations and evaluations of the Contractor's application for payment, the Architect shall determine the amount owing to the Contractor and shall sign and issue the application and certificate for payment. Such signature and issuance shall constitute a representation by the Architect to the Owner that, in the Architect's professional opinion, the work has progressed to the point indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The Architect is responsible for deducting from the Contractor's Application for Payment the value of work not completed, not conforming to Contract Documents, or otherwise in dispute.

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. All such rejected work shall be removed from the site as soon as possible at no expense to the Owner. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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and issue a final Certificate for Payment pursuant to Section 9.10. The Architect will determine substantial completion date(s) in accordance with Article 9.8.

...

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.~~If a question, dispute or controversy between the Owner and Contractor arises out of a provision of the Contract Documents, or the Architect's interpretation thereof, for which a decision process is not otherwise prescribed in the Contract Documents and which the parties are unable to resolve through Change Order or otherwise, the Owner and the Contractor may exercise legal remedies available to them.

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§ 5.1.3 The Contractor shall include the following in any Contract with a Subcontractor: The attention of the Subcontractor is directed to Minnesota Statutes, Chapter 574, which requires the prime Contractor to file a payment and performance bond for the project with the State of Minnesota. Section 574.31 of that Chapter states the limit of time within which a subcontractor must take certain actions specified therein to preserve a claim for nonpayment against the payment bond surety. Subcontractors of any tier may not bring claims against the Owner.

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, ~~as soon as practicable after award of the Contract,~~ no later than ten (10) days following the date on which the Contractor received written notice to proceed from the Owner, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the ~~14 day~~ 14 day period shall constitute notice of no reasonable objection.

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

...

§ 6.1.3 ~~The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.~~Where multiple Contracts are in effect or the Owner is utilizing its own forces for a portion of the Work, the Contractor's schedule and progress shall govern the work of other Contractors. The Contractor shall provide reasonable advance notice to other Contractors and the Owner regarding the schedule and Work to be performed by them. The other Contractors and/or the Owner's forces shall, after such notification, diligently proceed with their portion of the Work, including furnishing, installation, laying out or incorporation of Work, so as not to delay or impede the Contractor or its job progress.

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~**NOT USED**

...

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§ 6.2.4 The Contractor shall promptly ~~remedy~~ correct damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The ~~Owner~~ Owner's own forces and each separate contractor shall have the same responsibilities for cutting and patching for their work as are described for the Contractor in Section 3.14.

§ 6.2.6 Claims and disputes between the Contractor and separate Contractors are subject to the provisions of Article 15. The Contractors will indemnify, defend and hold harmless the State, and any of its consultants or agents against any claims arising from any such dispute. Notwithstanding the foregoing, any legal representation to defend the Owner is subject to the approval of the Minnesota Attorney General, and, at the Owner's discretion, the Contractor will pay the attorney fees in lieu of defending the Owner.

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If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will ~~allocate~~ assess the cost ~~among~~ to those responsible.

ARTICLE 7 CHANGES IN THE WORK In Article 7, and throughout the contract documents, whenever the term "Change Order" is used, it shall be substituted with the term "Supplemental Agreement". This includes all companion documents utilized for construction contract administration.

...

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; ~~an~~ a written order for a ~~minor~~ change in the Work may be issued by the Architect alone along with written approval from the Owner; a written approval from the Owner may be issued by the Owner alone.

...

§ 7.2.2 Methods and requirements used in determining adjustments to the Contract Sum shall include those listed in Sections 7.3.3 and 7.3.7. The Contractor shall provide costs broken down into material and labor units with their respective unit costs in accordance with Section 7.3.7. The Owner shall not be obligated to make payment for change orders or be liable for late payments and interest on changes until the Contractor provides cost breakdowns as required by Section 7.3.7 and until a Change Order is executed.

§ 7.2.3 The Contract sum and Contract time shall be adjusted only by Change Order and the Contractor shall provide documentation of changes in accordance with Section 7.3.3 and 7.3.7. The Contractor shall itemize the costs of the changes and provide material and labor cost breakdowns to support the costs being claimed as a result of the change. The signature of the Contractor on the Change Order binds the Contractor to all terms thereof and shows the Contractor's complete agreement therewith.

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

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

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§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the change shall be incorporated into the contract by Change Order and the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data provided in accordance with Section 7.3.7, to permit evaluation;

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.3 ~~Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~**NOT USED**

...

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and ~~shall be recorded as a Change Order.~~a subsequent Change Order shall be executed. A Construction Change Directive signed only by Owner and Architect constitutes a Change in the Contract which the Owner recognizes that the Contractor may be entitled to an adjustment to the Contract Sum if substantiated by the Contractor.

...

.1 ~~Costs of labor, including~~ labor costs are limited to the published and specified prevailing hourly basic rate or the negotiated hourly rate whichever is higher plus applicable multipliers for overtime, weekends and holidays, plus labor burden including: social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; and actual net payroll taxes. Further markups to labor are not permitted. The Contractor may express labor burden as a fixed percentage of the base hourly rate, however, such percentage is subject to review and adjustment by the Owner at any time. Labor hours may include only workers and working foreman directly involved in performing the Change Order work. Supervision above working foreman (such as general foreman, superintendent, project manager, etc.) is considered to be included in overhead and profit, and not allowed as a line item.

.2 ~~Costs of materials,~~ net actual Contractor or Subcontractor costs of itemized materials including applicable sales taxes, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 ~~Rental~~ rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; equipment with an original purchase cost of more than $500 and when rented from the Contractor or Subcontractor(s), the maximum rate is limited to 75% of the rental rate as set forth in Rental Rate Blue Book for Construction Equipment by Dataquest (latest edition) and shall include fuel and maintenance;

.4 ~~Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~costs of bond premiums, permit fees and taxes incurred by the contractor as a result of additional work that is approved by the owner. Payment for bond premium increases and additional permit fees will be made in accordance with Article 7.2 and upon presentation by the Contractor of proof of payment, or invoice related to the additional Work;

.5 ~~Additional costs of supervision and field office personnel directly attributable to the change.~~It is the policy of the Owner to pay direct costs for supplemental work plus a reasonable amount for Overhead and Profit (OH&P). In addition to the costs provided for above, Contractors and subcontractors may add up to 10% of the direct cost of their own labor, 5% of the direct cost of materials and equipment, and 5% of the cost of subcontractors or sub-subcontractors. The total mark-up for OH&P for all tiers involved in a change to the contract sum shall not exceed 20 percent. OH&P may be less than the foregoing amounts depending on the nature, extent or complexity of the change when it is not commensurate with the responsibility and administration involved with the change, such as the Contractor merely processing a substantial Change Order to a Subcontractor or the Contractor processing a Change Order for additional equipment required by the change. Costs for material distribution, tool and equipment fees, project difficulty, warranties, supervisory equipment, Change Order pricing and preparation or similar fees are defined as overhead cost.

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.6 The documentation for adjustment to the Contract sum shall include the following for each Contractor and subcontractor of any tier and must be in form provided by or agreed to by the Owner.

a. Name of Project

b. Name of the Contractor or Subcontractors

c. Name of material and equipment suppliers

d. A detailed description of the work performed and reference to proposal requests and Change Order Directives

e. Breakdown of labor and material costs are mandatory, including subcontractor and material supplier costs.

1. Labor costs shall include number of hours and hourly rate based on certified payroll.
2. Material costs shown separately and individually by unit and unit price. The Owner reserves the right to require the submittal of supplier's invoices.
3. Calculation of the amount of OH&P added; see 7.3.7.5 for OH&P calculation requirements.
4. Signature of Contractor and involved subcontractors

.7 The Owner may, at the Owner's sole discretion, waive the requirement for the cost breakdown of changes that total $1,500.00 or less and utilize a lump sum.

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§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, ~~the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The~~ amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those ~~costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim~~ costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a ~~Claim~~ claim in accordance with Article ~~15.~~ 15..

§ 7.3.10 ~~When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.~~**NOT USED**

…

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. A subsequent Change Order shall be executed.

§ 7.5 OWNER'S RIGHT TO PERFORM CHANGES IN THE WORK

Notwithstanding Article 6, if the Owner does not agree to the Contractor's proposal to perform changes in the work, or if the Owner does not deem it advisable or expedient to proceed on the basis of the proposal, the Owner reserves the right to perform changes in the work with its own forces, or to contract with others to perform the changes.

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§ 8.1.5 Where the performance of any act is directed, the time shall be computed so as to exclude the first and include the last day of the prescribed period. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

…

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes

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ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner ~~pending mediation and arbitration; or by other~~ for causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Extensions of Time will be considered and allowed only under the following conditions and/or circumstances, and only if the construction schedule is adversely affected by the change:

.1 Only those conditions enumerated in Section 8.3.1 above, over which the Contractor has no control will be considered. The burden of proof for the change in time shall rest with the Contractor, including documentation that the condition was beyond its control and documentation as to the extent of the proposed extension.

.2 A delay in the process of the work actually occurs as a result of one of the valid causes for extension.

.3 An unusual delay in delivery occurs solely due to delay in common transport beyond the Contractor's control. An extension of time will not be granted for delays in delivery where the delivery was not properly scheduled or an order not placed at an appropriated time to allow delivery or an order is improperly placed.

.4 With respect to a Change Order proposal for an extension of time due to climatic conditions, the parties shall consider the location of the site and the type of work affected, and shall recognize only unusually severe variations from average conditions. The Contractor must submit, with the request, local U.S. Weather Bureau climatological reports for the period involved plus a report indicating the average precipitation, temperature, wind velocity, etc. for the past 10 years from the nearest reporting station. Foul weather in itself will not be a valid reason for time extension. Requests for time extensions due to weather extremes will only be considered for the overall project based on analysis of the project schedule and will not be considered unless a substantial variation from seasonal average weather conditions occurred for a significant period of time and operations were necessarily affected. If the Contractor encounters unusually favorable weather subsequent to the issuance of a time extension for weather, the Contractor shall cooperate with the Owner and Architect to determine a time reduction based on the same analysis of the construction schedule.

.5 For changes in the work which significantly affect the time and process of the entire work and where the anticipated delay period can be reasonably calculated at the time the change is requests, any time extension shall be made no later than when the change is authorized by the Owner, and such extension shall be for such reasonable time as the Architect may determine upon analysis of the project schedule. Where the period of delay cannot be reasonably determined at the time the Owner authorizes the change, the Contract shall estimate the time period of delay, and propose a potential mechanism for the Architect to identify a reasonable extension to Contract time. For changes in the work which do not affect the process of the entire work, the Owner reserves the right to grant a time extension only for area, phase, activity or element in the Work affected by the change. Any approved time extension shall be implemented by a Change Order.

.6 A request for an extension of time made as a result of a labor dispute shall not exceed the actual period of the dispute, plus reasonable mobilization time. Any related, approved extension may be less than the period of dispute, depending on the actual effect the dispute had on the progress of the Work. Lockouts over which the Contractor has control will not be a valid reason for time extension.

.7 No time extension will be granted for delays resulting from improper scheduling or failure to have shop drawings or samples submitted to the Architect in ample time for a review.

.8 Delays caused by Subcontractors will be considered for time extension only under the same conditions defined above.

.9 Except for changes in the work, all requests for extension of time shall be made in writing to the Architect not more than 21 calendar days after the beginning of the first occurrence of the delay. No request will be considered beyond the stated time without the consent of the Owner.

.10 No time extensions will be granted for delays from failure by the Contractor to schedule inspections, testing and the work of separate contracts.

.11 Contractor "float" time built into the project schedule may be proportionately deducted from any approved extension.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, ~~before the first Application for Payment,~~ no later than ten (10) days following the date on which the

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Contractor received written notice to proceed from the Owner, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section ~~9.2,~~ 9.2., for completed portions of the Work. Such application shall be notarized, ~~if required,~~ and on an Owner prescribed form, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 ~~As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~**NOT USED**

§ 9.3.1.2 ~~Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.~~ **NOT USED**

§ 9.3.1.3 The Contractor shall comply with Section 9.11 and, shall submit payroll records as prescribed therein and in the Contract Documents and the Contractor shall bind all labor and material subcontractors to this requirement for this project and submit subcontractor payroll records as prescribed in Section 9.11 and the Contract Documents.

§ 9.3.1.4 The Owner will not make payment for Work or materials that are not installed or on the Owner's property or otherwise in the Owner's possession.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Should the Owner approve and pay for materials stored in an off site location, the Contractor shall insure the off site materials in such a manner as to protect the interest of the Owner against loss of stored materials and against loss of title to and ownership of stored materials.

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§ 9.4 ~~CERTIFICATES FOR PAYMENT~~CERTIFYING APPLICATIONS FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, ~~either issue to the Owner a Certificate~~ certify the Application for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 ~~The issuance of a Certificate~~ Certifying the Application for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, ~~that, to the best of the Architect's knowledge, information and belief,~~ that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. ~~The issuance of a Certificate~~ Certifying and Application for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. ~~However, the issuance of a Certificate for Payment will not be a~~

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~~representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~The Architect is responsible for deducting from the Contractor's Application for Payment, the value of the work not completed, not conforming to the Contract Documents, or otherwise in dispute. To the extend this Section 9.4.2 is inconsistent with Article 15, as amended herein, Article 15 shall govern and be incorporated by reference into this Section 9.4.2.

...

§ 9.5.1 The Architect may withhold ~~a Certificate~~ an Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly ~~issue a Certificate~~ certify an Application for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold ~~a Certificate~~ certification on an Application for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of ~~a Certificate~~ an Application for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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§ 9.5.3 ~~If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.~~ **NOT USED**

...

§ 9.6.1 After the Architect has ~~issued a Certificate~~ certified an Application for Payment, the Owner shall make payment in ~~the manner and within the time provided in the Contract Documents, and shall so notify the Architect.~~accordance with Minnesota Statutes 16A.124 which states that the Owner shall make payment within 30 days of receipt by the Owner of non-contested invoices. For this contract, an invoice is defined as an Application for Payment.

§ 9.6.1.1 Unless otherwise provided in the Contract Documents, the Owner shall follow the requirements of MN Statute 15.72 Subd.1 and Subd. 2, and MN Statute 15.73 Subd. 1, Subd. 2, Subd. 3, and Subd. 4. The Owner, in making partial payments, will retain five (5) percent of the duly approved value of the work performed under the Contract Documents as the date of the Contractor's Application for Payment until final completion and acceptance of all work covered by the Contract. The Contractor has the option, with Owner's consent, of depositing bonds or securities in a Bank or Trust Company to be held for the benefit of the Owner, in lieu of cash retainage. In that event, the Owner shall reduce the retainage in an amount equal to the value of the bonds or securities. Interest on the bonds or securities shall be payable to the Contractor as it accrues. Bonds and securities deposited or acquired in lieu of retainage, shall be of a character approved by the State Treasurer, including but not limited to:

.1 Bills, certificates, note or bonds of the United States.
.2 Other obligations of the United States or its agencies.
.3 Obligations of any corporation wholly owned by the Federal Government.
.4 Indebtedness of the Federal national Mortgage Association.

§ 9.6.1.2 If the Owner incurs additional cost as a result of the exercise of the option described above, the Owner may recover the costs from the Contractor by reducing the final payment due under the Contract. As work on the Contract progresses, the Owner shall, upon demand, inform the Contractor of all accrued costs.

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§ 9.6.1.3 If, after the work provided for in the Contract shall have been fifty (50) percent completed, and performed to the satisfaction of the architect, the retainage may be reduced to zero (0) percent on payments for the remaining work. The reduction amount is determined at the sole discretion of the Owner, and required certification by the architect that the Contractor is properly and continuously expediting the work. The Owner reserves the right to retain all or part of retainage after substantial completion until all Contractual obligations are completed in accordance with Section 9.8.5. Partial use or occupancy of the project by the Owner is not sufficient cause for reduction of retainage.

…

§ 9.6.2.1 In accordance with Minnesota Statutes 16A.1245, the Contractor shall, within 10 days of receipt of a progress payment, pay all Subcontractors and suppliers having an interest in the Contract their prorated share of the payment for all undisputed services provided by the Subcontractors and suppliers.

§ 9.6.2.2 The Contractor may withhold as retainage from Subcontractor(s) progress payments an amount not to exceed five (5) percent of the payment. The Contractor shall reduce or eliminate the retainage for a Subcontractor in the same manner that the Owner reduces or eliminates the retainage for the Contractor.

§ 9.6.2.3 The enforcement of these conditions shall be the responsibility of the Subcontractor(s) working through the Contractor and the Contractor's surety. To facilitate the resolution of any problems relating to these provisions, the Contractor shall furnish the Subcontractor(s) with the name, address and telephone number of the Contractor's surety within ten (10) days of the date on which the Contractor signs a Contract with the Owner.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a ~~Subcontractor, except as may otherwise be required by law.~~Subcontractor.

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§ 9.6.6 ~~A~~ Payment by the Owner, based on an Application for Payment, or a Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~**NOT USED**

§ 9.7 ~~**FAILURE OF PAYMENT**~~

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.~~**NOT USED**

…

§ 9.8.3 ~~Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not~~

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~~included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.~~After validating the Contractor's claim of Substantial Completion and accompanying list, the Architect will perform site inspections to verify work completion and prepare a supplemental comprehensive list of items to be completed prior to Substantial Completion and prior to final payments.

...

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner ~~shall~~ may, at the sole discretion of the Owner, make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is ~~incomplete or~~ incomplete, defective, not in accordance with the requirements of the Contract ~~Documents.~~Documents, or unsettled claims, and shall include the cost of any third party to finish incomplete, incorrect or defective work, and compensation and expenses of the Architect and Owner for work related thereto.

...

§ 9.9.1 The Owner may ~~occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.~~with the consent of Contractor's surety, if required, and consent of authorities having jurisdiction of the work, if required, use or occupy any portion of the work whether or not substantially complete in accord with Sections 9.8 and 2.5.1.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. The Architect shall prepare an itemized list of incomplete and defective work based on the Architect's observations and inspections of the work.

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. If the work is determined not to be complete, the Owner may deduct from the Contractor's final payment the cost of all subsequent inspections by the Architect.

§ 9.10.1.1 In the event incomplete, incorrect or defective work is not completed to the Owner's satisfaction within 30 calendar days of the architect's notice to the Contractor that such Work is incomplete, incorrect or defective, the Owner must notify the Contractor per Section 2.4.1, and may complete and correct work and deduct from the final payment any and all costs incurred by the Owner in completing such Work.

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment ~~and~~ (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, ~~releases and waivers of liens,~~ claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner.~~ by the Owner, and (6) Contractor has submitted all closeout items required by the Contract Documents, including, but not limited to, Operations & Maintenance Manuals, As-Built drawings, and properly executed Department of Revenue IC-134 forms. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

...

.4 faulty or defective Work appearing after Substantial Completion

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§ 9.10.6 LIQUIDATED DAMAGES

§ 9.10.6.1 If provided for in the Special Conditions, the Owner will be entitled to deduct liquidated damages from the final payment for failure of the Contractor to complete the projects by the date specified in the Contract. The Contractor will be assessed a charge in the amount specified, not as a penalty, but as liquidated damages to compensate the Owner for all additional costs incurred.

§ 9.10.6.2 The reasonableness of the charge is presumed, and the amount assessed is in addition to any other remedies available to the Owner. The charge will be assessed for each period the entire project is not suitable for use and/or occupancy measured from the Contract completion date to the date of Substantial Completion. No liquidated damages will accrue during periods of authorized delays or suspension. The charge will be as scheduled in the Special Conditions.

§ 9.10.6.3 The Owner may waive any portion of or all of the accrued liquidated damages provided (a) the project is ready for occupancy by the Owner or (b) available for the next stage construction as determined by the Owner.

§ 9.10.6.4 The Owner does not waive any rights under the Contract by the collection of liquidated damages. Liquidated damages will continue to be charged to the Contract or the Contractor's Surety in the event of Contractor default and Owner continuing or supplementing the work with its own forces or separate Contractors.

§ 9.11 PREVAILING WAGES

§ 9.11.1 Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

The prevailing hours of labor may not be more than eight hours per day or more than 40 hour per week. Pursuant to Minnesota Statutes 177.43, "No laborer or mechanic employed directly on the project work site by the Contractor or any subcontractor, agent or other person doing or contracting to do all or a part of the work of the project, is permitted or required to work more hours than the prevailing hours of labor, unless paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay; and a laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area." Nothing in this Contract shall be construed as prohibiting the Contractor or subcontractor paying a higher negotiated wage rate. This requirement does not apply to wage rates and hours of employment of laborers or mechanics who process or

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manufacture materials or products or to the delivery of materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply processed or manufactured materials or products. This section applies to laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

§ 9.11.2 To facilitate compliance pursuant to the State Statutes, wage determinations (prevailing wages) were prepared for different trades for each county from which labor for said project would be secured and are included and published in the Contract Specifications. Any wage determinations that are found not to be so promulgated do not relieve the Contractor from any responsibility for paying the prevailing wage rate of the trade in question. All laborers, workers, and mechanics must be paid the prevailing wage rate for work performed on the project. If the wage certification or published prevailing wages do not include a rate for a classification of work used on the project, the contractor shall contact the Department of Labor and Industry to obtain a rate.

§ 9.11.3 In accordance with Minnesota Statutes 177.30 Sub. 4 and 177.43 Sub. 3, the Contractor and Subcontractor shall furnish to the Contracting Authority and the Project Owner all payrolls, of all workers on the project, a certified payroll report via E-mail as attachments, a State of Minnesota Prevailing Wage Payroll Report as a Microsoft Excel file and Statement of Compliance Form as a PDF file to the appropriate E-mail address:

.1 NOT USED.

.2 Use the E-mail address provided in the solicitation or as provided by the Agency.

The State of Minnesota Prevailing Wage Payroll Report and Statement of Compliance Form are available on the MMD website at www.mmd.admin.state.mn.us/mn02000.htm. Submit the completed and signed State of Minnesota Prevailing Wage Payroll Report as a Microsoft Excel file and the Statement of Compliance Form as a PDF file, no other payroll forms will be accepted to meet this requirement.

These completed forms must be furnished not more than 14 days after the end of each pay period.

The Subject Line on the Contractor's and Subcontractor's E-mail must show the Firm name, the Contract Number or Purchase Order Number and the pay period ending date.

Failure to maintain records as required by Minnesota Statutes 2008, Section 177.30 may be fined up to $1,000 for each failure to maintain said records. This penalty is in addition to any penalties provided under section 177.32, Subd. 1. Contractors and subcontractors must keep these records for three years after the contracting authority has made final payment on the public works project.

For questions regarding the Prevailing Wage Laws, contact the Department of Labor and Industry at 651.284.5091.

§ 9.11.4 The Contractor is solely responsible for payment of all required Prevailing Wage rates. Further, the State will not be liable for increased labor cost, errors in the rates or classifications, or changes to same prior to the awarding of Contracts. Information pertaining to the prevailing wage rates, prevailing hours of labor and hourly basic rates are included in this specification. Said wage rates must be posted in at least one conspicuous place for the employees working on the project.

§ 9.11.5 Any Contractor, subcontractor, or agent, who, after executing a contract in compliance with this section, pays to any laborer, workman, or mechanic employed directly on the project, a lesser wage for work done on the project than the prevailing wage rate, shall be subject to fine and imprisonment. This misdemeanor is punishable by a fine of not more than $700, or imprisonment for not more than 90 days, or both. Each agent or subcontractor shall furnish to the contractor evidence of compliance with this section. Each day a violation of this section continues is a separate offense.

§ 9.11.6 In accordance with Minnesota Statutes 177.43, sub. 6a, upon issuance of a notice of a compliance order and withholding order issued by the Department of labor and Industry to the Contractor of subcontractor or another employer pursuant to section 177.27, sub. 4 for violation of sections 177.41 to 177.44, the Owner, as the contracting authority shall withhold payment of sufficient sum to the prime or general contractor on the project to satisfy the back wages assessed or otherwise cure the violation, and the owner must withhold the sum ordered until the compliance order has become a final order and has been fully paid or otherwise resolved by the Contractor.

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§ 10.2.1 The Contractor shall take ~~reasonable~~ reasonable, and legally required, precautions for safety of, and shall provide ~~reasonable~~ reasonable, and legally required, protection to prevent damage, injury or loss to

...

.1 Hotworks: In addition to legally required and specified protection requirements, the Contractor is responsible for obtaining the Owner's Personnel/Property protection requirements from the facility in which the Contractor is performing the work and to implement a "hotworks" safety program during the performance of their work. Hotworks is defined as use of any equipment or tools capable of producing heat and ignition sources sufficient to start fires or ignite explosives. The local Facility Manager or Safety Director shall be informed in advance of any hotworks necessary for the project. Safety precautions may include the removal or relocation of fire hazards, the provision of guards and fire blankets, coordination and verification of sprinkler systems and a fire watch that extends a minimum of 30 minutes past the conclusion of any hotworks.

.2 Safety Program: The Contractor shall implement and provide documentation on a Safety Program such as AWAIR (A Workplace Accident Injury Reduction Act) program and:

.1 Post Emergency phone numbers and procedures at the project site.

.2 Provide and Post the Contractor's Safety Director's name and phone number

.3 Provide and Post the Contractor's on-site safety representative's name, title and phone number

.4 Conduct weekly Safety Meetings during the performance of the contract and allow owner's safety representatives to be present during the Safety Meetings.

The owner assumes no obligation or liability for safety on the project site or legal and insurance requirements involving safety.

§ 10.2.3.1 In the event the owner, owner's representative, or architect observe an unsafe or hazardous condition on the project site, they shall have the right to stop work until such hazard or safety condition is remedied by the contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel.~~personnel and comply with applicable regulations, laws pertaining to the storage, handling, use, transportation of explosives, hazardous materials or equipment.

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§ 10.3.2 ~~Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.~~All Contractors shall fully comply with the requirements of Minnesota Statutes, Sections 326.70 through 326.81 and Minnesota Rules, parts 4620.3000 to 4620.3700.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or~~

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~~death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~Any Contractor who performs any asbestos-related work or asbestos management activity shall be licensed or certified by the Minnesota Commissioner of Health under Minnesota Statutes Sections 326.70 through 326.81, and shall perform such work or activity in accordance with rules prescribed by the Minnesota Commissioner of Health related to asbestos abatement and asbestos management activity. Without waiver of other provisions in this Article 10.3, the Contractor is not responsible for damages, costs, fines or penalties caused by the handling of pre-existing hazardous materials and substances, except to the extent of the contractor's fault or negligence in the handling of such substances.

§ 10.3.4 ~~The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~If there is a Contract involving existing construction, the Owner will provide to the Contractor an Asbestos Survey Report identifying the building materials containing asbestos. The Contractor shall read and understand the content of the Report and examine the site and facilities as necessary to develop a full understanding of the extent, location, quantity, and conditions of any potential asbestos containing material identified in the Report.

§ 10.3.5 ~~The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~Where potentially hazardous substances have been partially removed from any work area, either prior to or in conjunction with, the construction required under the asbestos abatement Contract, the Owner will provide to the Contractor a copy of the drawings, specifications, or other Documents which indicate the extent of removal work anticipated to be performed prior to the work of the Contractor. The Contractor shall review and fully understand the extent of the provided Documents and shall make appropriate inspections to ascertain that potential asbestos containing materials have been removed from affected work areas or that they have been encapsulated and will not pose a hazard to employees on the job site.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~All Contractors shall know and understand that where asbestos materials may have been partially or fully removed to facilitate the work of the Contractor, that such prior work is not a guarantee that all asbestos containing materials have been completely removed from all areas that might be affected by the work of the Contractor. The Contractor shall protect any asbestos materials that were left in place or that were not shown on the asbestos removal plans as scheduled to be removed.

§ 10.3.7 In responding for this project, the Contractor shall know and understand that it may encounter potential asbestos containing materials that may impede the progress of construction, require changes in the project schedule or changes in the sequences of work, or result in delays in completion. If such an event occurs, the Owner will grant a reasonable Contract time extension, but only if the Contractor could not reasonably have foreseen such conditions and could not reasonably adjust its project schedule to avoid any delays in completion.

§ 10.3.8 NOT USED

§ 10.3.9 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor or any tier of subcontractor unless such materials or substances were required by the Contract Documents.

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§ 11.1 ~~CONTRACTOR'S LIABILITY INSURANCE~~CONTRACTOR'S INSURANCE

§ 11.1.1 The Contractor shall ~~purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the~~

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~~Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:~~

~~.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;~~

~~.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;~~

~~.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;~~

~~.4 Claims for damages insured by usual personal injury liability coverage;~~

~~.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~

~~.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;~~

~~.7 Claims for bodily injury or property damage arising out of completed operations; and~~

~~.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.~~not commence work under the Contract until it has obtained all the insurance required by the specifications and such insurance has been approved by the State of Minnesota, Materials Management Division. All policies and certificates shall provide that the policies shall remain in force and effect throughout the term of the contract.

§ 11.1.2 ~~The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.~~

COMMERCIAL GENERAL LIABILITY

§ 11.1.2.1 Contractor shall maintain insurance to cover claims arising from operations under this Contract, whether such operations are by the Contractor, Subcontractor, Sub-Subcontractor or by anyone directly or indirectly employed under this Contract. Unless otherwise specified, the insurance **minimum** limits of liability 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 and Completed Operations
$50,000 – Fire Damage (any one fire)
$5,000 – Medical Expense (any one person per occurrence)

§ 11.1.2.2 The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal Injury & Advertising Injury
- Products and Completed Operations Liability, to be maintained for at least 3 years after completion of the work under this contract.
- Contractual Liability as provided in ISO form CG 00 01 12 04 or its equivalent
- Pollution exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – CG 00 01 12 04 or equivalent
- Independent Contractors – Let or Sublet work
- Explosion, Collapse, and Underground (XCU) perils
- Broad Form PD
- Waiver of Subrogation in favor of the State of Minnesota

§ 11.1.2.3 Officers and Employees of the State of Minnesota, the Architect and its agents shall be named as Additional Insureds, by endorsement, ISO Forms CG 20 10 and CG 20 37 or their equivalent for claims arising out of the Contractor's negligence or the negligence of those for whom the Contractor is responsible.

§ 11.1.3 ~~Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An~~

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~~additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.~~

BUSINESS AUTOMOBILE LIABILITY

§ 11.1.3.1 Contractor shall maintain insurance to cover liability arising out of the operations, use, or maintenance of all owned, non-owned and hired vehicles. Unless otherwise specified, the insurance **minimum** limits shall be as follows:

$2,000,000 – Per Occurrence combined Single Limit Bodily Injury and Property Damage.

§ 11.1.3.2 The following coverages shall be included:

- Owned Automobiles
- Hired Automobiles
- Non-owned Automobiles
- Waiver of subrogation in favor of the State of Minnesota

§ 11.1.4 ~~The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.~~

PROFESSIONAL LIABILITY – DESIGN ERRORS AND OMISSIONS

§ 11.1.4.1 If the Owner specifies that the Contractor provide design and related services and, pursuant to Section 3.12.10, the Contractor provides such services with its employees, the Contractor shall maintain insurance covering negligent acts, errors or omissions, arising out of the performance of, or the failure to perform, such professional services included in the Contract Documents. Additionally, the Contractor shall require its Architectural and Engineering consultants and their subconsultants, if any, to maintain professional liability insurance. All such insurance shall be maintained for a minimum of five (5) years, if commercially available, otherwise a minimum of three (3) years following completion or earlier termination of the Project. Unless otherwise specified, the insurance minimum shall be as follows:

§ 11.1.4.2 Minimum limit of liability of $2,000,000 per claim and $2,000,000 annual aggregate. Any deductible will be the sole responsibility of the Contractor and may not exceed $50,000 without the written approval of the Owner.

§ 11.1.4.3 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 Contract and Contractor shall maintain such insurance for a period of at least five (5) years, if commercially available, otherwise a minimum period of three (3) years, following completion or earlier termination of the Project. If such insurance is discontinued, extended reporting period coverage must be obtained to fulfill this requirement.

Evidence of insurance shall be filed with the Owner prior to start of design services if they are to be provided.

§ 11.1.5 WORKERS' COMPENSATION

§ 11.1.5.1 Contractor shall provide workers' compensation insurance for all employees and shall require any Subcontractor to provide workers' compensation insurance in accordance with the statutory requirements of the State of Minnesota and must include:

a. Part 2, 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
   - $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 State of Minnesota, as Owner.

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§ 11.1.5.2 If Contractor is self-insured for its obligation under the Workers' Compensation Statutes in the jurisdiction where the project is located, a Certification of the Authority to Self-Insure such obligations shall be provided.

Evidence of Subcontractor insurance shall be filed with the Contractor.

§ 11.1.6 AVIATION AND/OR MARINE PUBLIC LIABILITY

§ 11.1.6.1 Should aircraft or watercraft of any kind be used by the Contractor, any tier of Subcontractor or by anyone else on their behalf, Contractor or Subcontractor shall maintain or cause the operator of the aircraft/watercraft to maintain aircraft/watercraft public liability insurance including bodily injury, property damage and passenger liability, as respects any aircraft/watercraft owned, used, operated or hired in connection with the work by the Contractor, Subcontractor or anyone else in the following limits:

§ 11.1.6.2 Aircraft/ Watercraft Liability - $10,000,000 Per Occurrence combined Single Limit Bodily Injury and Property Damage.

Evidence of insurance shall be filed with the Owner prior to use of equipment on project.

§ 11.1.7 UMBRELLA OR EXCESS LIABILITY

§ 11.1.7.1 The Contractor shall provide Umbrella or Excess Liability Insurance with limits of not less than $2,000,000 per occurrence and $2,000,000 aggregate and with coverage at least as broad as the primary coverages of Commercial General Liability, Employer's Liability and Automobile Liability set forth in Article 11 or use Umbrella or Excess Liability Insurance to supplement the primary policy limits to satisfy the full policy limits required by the Contract.

§ 11.1.8 ADDITIONAL INSURANCE CONDITIONS

§ 11.1.8.1 Primary and Non-Contributory - Contractor's policy(ies) shall be primary and non-contributory insurance to any other valid and collectible insurance available to the State of Minnesota or self-insurance maintained by the State of Minnesota with respect to any claim arising out of this Contract.

§ 11.1.8.2 Contractor is responsible for payment of contract related insurance premiums and deductibles.

§ 11.1.8.3 Insurance Companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.

§ 11.1.8.4 Insurance Companies waive their rights to assert the immunity of the State as a defense to any claims arising out of this Contract.

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

§ 11.1.8.6 Certificates of Insurance acceptable to the State of Minnesota shall be submitted prior to commencement of the work under this contract. If the Contractor receives a cancellation notice from an insurance carrier affording coverage herein, the Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless the Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be canceled without at least thirty (30) days advance written notice to the State of Minnesota.

§ 11.2 ~~OWNER'S LIABILITY INSURANCE~~

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~Owner's Liability Insurance: The Owner will be responsible for maintaining its own liability insurance or self insurance program and, at its option, may purchase and maintain such insurance as will protect the Owner against claims which may arise from operations under the Contract.

§ 11.3 ~~PROPERTY INSURANCE~~PROPERTY INSURANCE

§ 11.3.1 ~~Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract~~

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~~Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This~~ **BUILDER'S RISK – BY CONTRACTOR**

The Contractor shall be responsible for providing and maintaining "All Risk" or equivalent Builder's Risk policy insuring the interest of the Owner, Contractor, and any tier of Subcontractor. Coverage on an "All Risk" or equivalent basis shall include the perils of flood, earthquake and pollution cleanup expense. Builder's Risk limit of liability shall be equal to the amount of the contract. Any deductible shall be the sole responsibility of the Contractor and shall not exceed $10,000 without the written approval of the Owner.

.1 The Builder's Risk policy will cover all materials, supplies and equipment that are intended for construction and specific installation in the project while such materials, supplies and equipment are located at the project site, in transit and while temporarily located away from the project site for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

.2 Any property not covered by the Builder's Risk policy, such as the Contractor's or any tier of Subcontractor's licensed motor vehicles or personal property, including job trailers, machinery, tools, equipment and property of a similar nature not destined to become a part of the project, shall be the responsibility of the Contractor or Subcontractor at any tier, and such person or organization may self insure or provide other insurance at its option for the same.

.3 Waiver of Liability: Absent Owner or Architect sole negligence or breach of specific Contractual duty specifically and logically related to the damage or loss, the Owner or Architect will not be responsible for loss or damage to property of any kind owned, borrowed, rented or leased by the Contractor, Subcontractors of all tiers and/or the Contractor's/Subcontractors employees, servants or agents.

.4 Waivers of Subrogation: The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors of all tiers and (2) the Architect, and the Architect's Subcontractors of all tiers for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the provisions of paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner or Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, and the Architect's Subcontractors of all tiers, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

.5 All losses and claims shall be immediately reported to the Contractor, Owner and applicable insurance carrier, under loss notice procedures as directed by the Contractor.

.6 Any loss insured under Section 11.3 is to be adjusted with the Contractor and made payable to the Contractor as trustee for all insured parties, as their interests may appear, subject to the requirements of any applicable mortgage clause. The Contractor shall pay the Owner a just share of any insurance moneys received, and by appropriate agreement, written where legally required for validity, shall require the Contractor to make just share payments to the Subcontractors and lower tiered Sub-Subcontractors in similar manner.

.7 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise.

.8 Boiler and Machinery Insurance. The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owners, Contractor, Subcontractors and Sub-Subcontractors in the Work, and the Owner and Contractor shall be named insureds.

.9 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ 11.3.1 BUILDER'S RISK – BY OWNER

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If required by the Contract, the Owner shall be responsible for providing and maintaining "All Risk" or equivalent Builder's Risk policy insuring the interest of the Owner, Contractor, and any tier of Subcontractor. Coverage on an "All Risk" or equivalent basis shall include the perils of flood, earthquake and pollution cleanup expense.

.1 The Builder's Risk policy will cover all materials, supplies, and equipment that are intended for construction and specific installation in the project while such materials, supplies and equipment are located at the project site, in transit, and while temporarily located away from the project site for the purpose of repair, adjustment, or storage at the risk of one of the insured parties.

.2 Any property not covered by the Builder's Risk policy, such as the Contractor's or any tier Subcontractor's licensed motor vehicles or personal property, including job trailers, machinery, tools, equipment and property of a similar nature not destined to become a part of the project, shall be the responsibility of the Contractor or Subcontractor at any tier, and such person or organization may self insure or provide other insurance at its option for the same.

.3 Waiver of Liability: Absent Owner or Architect sole negligence or breach of specific Contractual duty specifically and logically related to the damage or loss, the Owner or Architect will not be responsible for loss or damage to property of any kind owned, borrowed, rented or leased by the Contractor, Subcontractors of all tiers and/or the Contractor's/Subcontractors employees, servants or agents.

.4 Waivers of Subrogation: The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors of all tiers and (2) the Architect, and the Architect's Subcontractors of all tiers for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the provisions of paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner or Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, and the Architect's Subcontractors of all tiers, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

.5 Duties in the Event of Loss or Damage:

1. The Contractor shall notify the police if a law may have been broken.
2. All losses and claims shall be immediately reported by the Contractor to the Owner and applicable insurance carrier, including a description of the property involved.
3. As soon as possible, the Contractor shall give the Owner a description of how, when and where the loss or damage occurred.
4. The Contractor shall take all reasonable steps to protect the property from further damage, and keep a record of the expenses incurred to protect the property, for consideration in the settlement of the claim. This will not increase the limit of insurance. The Owner will not pay for any subsequent loss or damage that is not due to a covered cause of loss. If feasible, the Contractor shall set the damaged property aside and in the best possible order for examination.
5. The Contractor shall provide the Owner, at the Owners request, complete inventories of the damaged and undamaged property, including quantities, costs, values and the amount of loss claimed.
6. As often as may be reasonably required, the Contractor shall permit the Owner to inspect the property to prove the loss or damage, and to examine the Contractor's books and records that are relevant to the claim. Also, the Contractor shall permit the Owner to take samples of damaged and undamaged property for inspection, testing and analysis, and permit the Owner to make copies from the Contractor's books and records that are applicable to the claim.
7. The Contactor shall send the Owner a signed, sworn proof of loss within 60 days of the Owners request using the Owner's forms. The proof of loss shall contain information the Owner requests to investigate the claim.
8. The Contractor shall cooperate with the Owner in the investigation or settlement of the claim.
9. The Owner may examine the Contractor under oath, at such times as may be reasonably required, about any matter relating to this insurance or the claim, including the Contractor's books and records that are relevant to the claim. In the event of an examination, the Contractor's answers must be signed.

.6 Any loss insured under Section 11.3 is to be adjusted with the Owner and made payable to the Owner as trustee for all insured parties, as their interests may appear, subject to the requirements of any

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applicable mortgage clause. The Owner shall pay the Contractor a just share of any insurance moneys received by the Owner, and by appropriate agreement, written where legally required for validity, shall require the Contractor to make payments to the Subcontractors and lower tiered Sub-Subcontractors in similar manner.

.7 The property insurance provided by Owner under this Section 11.3 is subject to a deductible. The Contractor shall be responsible for payment of the first $5,000 of such deductible on each and every loss occurrence. The Contractor may self insure or obtain insurance to cover its responsibility, at its option. The Owner will be responsible for the amount of any loss occurrence in excess of the deductible amount, up to the Builder's Risk policy limit as it may be applied to any loss under the Contract.

.8 When Coverage Ceases:

The insurance provided by the Owner's policy will end when one of the following first occurs:

a. The coverage expires or is cancelled;
b. The property is accepted by the purchaser;
c. The Contractors interest in the property ceases;
d. The Contractor abandons the construction with no intention to complete it;
e. Unless the Owner specifies otherwise in writing:
   1. 90 days after construction is complete; or
   2. 60 days after the insured property is:
      a. Occupied in whole or in part; or
      b. Put to its intended use.

.9 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the ~~Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~Owners, Contractor, Subcontractors and Sub-Subcontractors in the Work, and the Owner and Contractor shall be named insureds.

.10 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ 11.3.1 BUILDER'S RISK – NOT REQUIRED

~~**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

~~**§ 11.3.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

~~**§ 11.3.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

~~**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or~~

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~~companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.3.2 BOILER AND MACHINERY INSURANCE~~

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~

~~§ 11.3.3 LOSS OF USE INSURANCE~~

~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

~~§ 11.3.4~~ ~~If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.3.5~~ ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ 11.3.6~~ ~~Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 11.3.7 WAIVERS OF SUBROGATION~~

~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

~~§ 11.3.8~~ ~~A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~

~~§ 11.3.9~~ ~~If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such~~

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~~loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

~~**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

§ 11.4.1 ~~The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~Unless otherwise exempted in these Contract Documents, the Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond (individually a "Bond" and collectively "Bonds") to the Owner. The Performance Bond shall be in an amount equal to 100% of the full amount of the Contract sum as security for the faithful performance of the Contract, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Contract sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such Bonds shall be on forms approved by or provided by the Owner and shall name the Owner as primary Obligee.

§ 11.4.2 ~~Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~The surety issuing the Bonds shall be satisfactory to the Owner, be licensed to issue Bonds in the State of Minnesota, shall be rated by A.M. Best an A-(minus) or better, and shall be within the limit set by the Treasury Department as the net limit on any single risk for the surety, or if co-sureties are utilized, the amount of each Bond shall be within the total of such limits set for a surety and any such co-sureties. There shall be no affiliation between the Contractor and any bonding agencies or agent used.

§ 11.4.3 In the event of change orders that result in an increase in the Contract Sum, the penal sum of each Bond shall increase in the amount of such change in the Contract sum without obtaining the surety's consent up to a maximum of 10% of the penal sum. Any aggregate increase in the excess of 10% of the original penal sum shall require the surety's written consent. The Contractor shall be responsible for getting the consent, and shall submit a copy of such consent to the Owner.

§ 11.4.4 If the Owner determines that the surety providing the bonds no longer meets the requirements of Section 11.4.2, the Contractor shall obtain an adequate replacement surety that will provide acceptable bonds in the same form and amount as the bonds issued by the original surety. The Contractor shall pay the premium(s) on such new Bond(s). The Contractor acknowledges that further payments to the Contractor may not be made until the new surety has been qualified and approved.

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The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. The costs of corrections include labor, material, equipment, safety precautions in accordance with the Contract Documents.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties ~~established under Section 9.9.1,~~ or ~~by terms of an applicable~~ special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it

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promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Notice of discovery and required correction may be given by either the Owner or the Architect.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed and accepted after Substantial Completion by the period of time between Substantial Completion and the actual completion and acceptance of that portion of the Work.

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§ 12.2.6 The Contract Documents survive final payment and are applicable to the performance of all corrective work required, regardless of time.

§ 12.2.7 The obligation of the Contactor to perform corrective work shall survive final completion of the work and final payment under the Contract.

§ 12.2.8 The Owner does not waive any remedies for the cost of performing corrective work the Contractor neglects or refuses to perform in a timely manner.

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If the Owner chooses to accept nonconforming work pursuant to this provision, then the Contractor shall warrant the accepted work for the period stated in Section 12.2 as amended. The adjusted Contract Sum, when determined after final payment, shall be reimbursed to the Owner by the Contractor.

...

The ~~Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~laws of the State of Minnesota shall govern the Contract and the venue for any claims or actions shall be Ramsey County, Minnesota.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither~~ Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 ~~The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.~~**NOT USED**

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Normal communication between parties may be by US Mail, email or fax.

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§ 13.5.1.1 The requirements of 13.5.1 may be superseded by the project General Requirements, and by project specifications providing for the Owner to obtain and pay for specific testing and special inspections. Tests and inspections otherwise required by codes, laws, ordinances, rules or regulations of any authority having jurisdiction over the project shall be provided and paid for by the Contractor using entities acceptable to said authority. The Contractor shall schedule all tests and inspections with the providing party so as not to delay the project.

...

§ 13.6 ~~INTEREST~~

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~NOT USED

...

§ 13.8 ASSIGNMENT OF ANTITRUST CLAIMS

§ 13.8.1 The Contractor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and materials purchased in connection with this order or Contract resulting from antitrust violations which arise under the antitrust laws of the State of Minnesota. In addition, Contractor warrants and represents that each of their first tier suppliers and Subcontractors shall assign any and all such claims to the State of Minnesota. By signing the Solicitation, the Contractor agrees with the following statement:

.1 I/We certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a solicitation response; that this solicitation response has been independently arrived at without collusion with any other vendor, competitor, or potential competitor; that this solicitation response has not been knowingly disclosed prior to the opening of solicitation responses of any other vendor or competitor; and that the above statement is accurate under penalty of perjury.

§ 13.9 RECYCLING

§ 13.9.1 In accord with the State of Minnesota's sustainability guidelines, it is in the best interest of the State that scrap, waste and demolished materials be recycled. All Contractors, to the extent commercially available, are required to recycle recyclable scrap materials generated on State of Minnesota building projects. A recycling plan may be required by the General Requirements and Specifications. If the Owner discovers that the Contractor is not utilizing commercially available recycling the project may be stopped until recycling provisions are implemented by the Contractor. When waste and demolished materials contain or are suspected of containing legally defined hazardous compounds, legal and proper disposal by qualified and licensed personnel is required.

§ 13.10 RECORDS

§ 13.10.1 The books, records, documents, bid preparation documents, and accounting procedures and practices of the Contractor and its employees, agent, or subcontractors relevant to the Contract must be made available to and subject to examination by the Owner, Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the contract. The Contractor shall maintain all documentation, at its expense, in the event of a claim giving rise to a litigation hold order.

§ 13.11 GOVERNMENT DATA PRACTICES ACT

§ 13.11.1 The Contractor and the Owner must comply with the Minnesota Government Data Practices Act, Minn. Statute Ch 13, as it applies to all data provided by the Owner, and as it applies to all data created collected, received, stored, used, maintained or disseminated by the Contractor under this Contract. The civil remedies of Minn. Statute 13.08 apply to the release of all data by either the Contractor or the Owner.

§ 13.11.2 If the Contractor receives a request to release data, the Contractor must immediately notify the Owner before releasing any data. The Owner will give the Contractor instructions concerning the release of the data to the requesting party.

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§ 13.13 LABOR AND WAGES NONDESCRIMINATION

§ 13.13.1 The Contract shall conform with and agree to provisions of Minnesota Statutes section 181.59 that prohibits discrimination in the hiring of labor by reason of race, creed or color, which section is reproduced below:

§ 13.13.2 181.59 DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT. Every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district, or any other district in the State, for materials, supplies or construction shall contain provisions by which the Contractor agrees:

.1 That, in hiring of common or skilled labor for the performance of any work under any Contract, or any subcontract, no Contractor, Material Supplier, or Vendor shall, by reason of race, creed, or color discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

.2 That no Contractor, Material Supplier, or Vendor shall, in any manner, discriminate against or intimidate, or prevent the employment of any person or persons identified in the clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any Contract on account of race, creed, or color;

.3 That a violation of this Section is a misdemeanor; and

.4 That this Contract may be canceled or terminated by the State, county, city, town, school board, or any other person authorized to grant the Contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms and conditions of this Contract.

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.3 ~~Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~**NOT USED**

.4 ~~The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~**NOT USED**

…

§ 14.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~**NOT USED**

…

.5 files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of commencement of same, makes an assignment for the benefit of its creditors, has a receiver appointed to manage the Contractor's assets or otherwise is becoming insolvent; or

.6 materially fails to comply with interim or final completion dates as required by the Contract Documents, or materially fails to comply with design requirements of the Contract Documents, or persistently fails to perform the work in accordance with the Contract Documents.

.7 fails to maintain the required insurance.

§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after~~ may by giving the Contractor and the Contractor's surety, if any, ~~seven days'~~ written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

…

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§ 14.2.4 If the unpaid balance of the Contract Sum ~~exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby,~~ the direct and indirect consequential costs of completing the Work, including but not limited to fees and charges of Architects, Engineers, Attorneys, other professionals and court costs,, and other damages incurred by the ~~Owner and not expressly waived, such excess shall~~ Owner, such excess will be paid to the Contractor. If such costs and damages exceed ~~the~~ such unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this~~ Such costs incurred by the Owner will be approved as to reasonableness by the Owner, but when exercising any rights or remedies under this article, the Owner shall not be required to obtain the lowest price for the work performed. This obligation for payment shall survive termination of the ~~Contract.~~Contract, final completion of work and final payment.

§14.2.5 If a court determines that the termination was not supported by at least one of the reasons stated in Section 14.2.1, the termination shall be deemed a termination for the Owner's convenience and be governed by Section 14.4.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such ~~termination, along with reasonable overhead and profit on the Work not executed.~~termination. The Contractor may not recover Overhead and Profit for Work not performed.

...

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Arbitration and Mediation, mandated or otherwise required, as a method of dispute and/or claim resolution, wherever referenced in Article 15, do not apply to this Contract or any Contract with the State of Minnesota. This Article 15 is modified to exclude all references to arbitration and mediation and to substitute the following:

> The Contractor and the State may exercise those legal remedies in District Court as may be available to them in connection with any dispute arising out of this agreement which cannot be settled by the parties.
>
> In case any question, dispute or controversy arises between the Contractor and Owner, or Contractors separately employed by the State, such dispute or controversy shall be referred to the Commissioner of Administration or the Commissioner of Administration's designee.
>
> The venue of any proceedings is herein agreed to be Ramsey County, State of Minnesota, unless otherwise specifically agreed.
>
> The Contractor shall carry on the work and maintain the progress schedule during any proceedings or disputes, unless otherwise instructed by the Owner in writing.

...

Claims by ~~either~~ the ~~Owner or~~ Contractor must be initiated by written notice to the ~~other party and to the Initial Decision Maker~~ Owner with a copy sent to the ~~Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party~~ Architect. Claims must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. For purposes of this section, communication regarding contractor's claims may be communicated by the Owner, Architect, Owner's Representative or other agent of the Owner acting on behalf of the owner.

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Claims not initiated by the contractor within 21 days after occurrence of the event giving rise to such claim or within 21 days after the contractor first recognizes the condition giving rise to the claim are waived.

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Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the ~~Initial Decision Maker.~~ Owner.

...

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled ~~construction.~~construction, in accordance with Section 8.3.2.4.

...

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~Waiver of Consequential Damages is NOT USED. The Owner reserves the right to invoke consequential damages as an additional remedy for the Owner.

§ 15.1.7 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

If conditions are encountered at the site which are (1) subsurface or otherwise fully concealed physical conditions which differ materially from those affirmatively indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that could not have been anticipated and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents (3) are not observable prior to bidding or inferable by the type of construction, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. If notice is not given by the Contractor within 21 days after first observance of the condition, all claims by the contractor that arise from the condition are waived. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 15.2 INITIAL DECISION – NOT USED

§ 15.2.1 ~~Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a~~

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~~condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~**NOT USED**

§ 15.2.2 ~~The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~ **NOT USED**

§ 15.2.3 ~~In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~**NOT USED**

§ 15.2.4 ~~If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~**NOT USED**

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~**NOT USED**

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~**NOT USED**

§ 15.2.6.1 ~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~ **NOT USED**

§ 15.2.7 ~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~**NOT USED**

§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~ **NOT USED**

§ 15.2.9 Arbitration and Mediation as a method of dispute resolution, wherever referenced in Article 15 or elsewhere in the Contract Documents, do not apply to this Contract. Any unresolved issue, dispute or controversy arising between the Contractor and Owner, Architects, or Contractors separately employed by the Owner shall first be referred to the Commissioner of Administration or its designated representative

§ 15.2.10 The Contractor and Owner may exercise those legal remedies in District Court as may be available to them in connection with any dispute arising out of this agreement which cannot be settled by the parties subject to the conditions in Section 13.7.

The venue of any proceedings shall be Ramsey County, State of Minnesota, unless otherwise agreed in writing.

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The Contractor and Subcontractors shall carry on the work and maintain the progress schedule during any proceedings, unless otherwise instructed by the Owner in writing.

§ 15.3 MEDIATION – NOT USED

§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.~~ **NOT USED**

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~ **NOT USED**

§ 15.3.3 ~~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.~~ **NOT USED**

§ 15.4 ARBITRATION - NOT USED

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~ **NOT USED**

§ 15.4.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~ **NOT USED**

§ 15.4.2 ~~The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~ **NOT USED**

§ 15.4.3 ~~The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~ **NOT USED**

§ 15.4.4 CONSOLIDATION OR JOINDER - NOT USED

§ 15.4.4.1 ~~Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~ **NOT USED**

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

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§ 15.4.4.3 ~~The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~**NOT USED**

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(Signed)

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(Title)

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(Dated)

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