

AIA[®] Document B105™ – 2017

Standard Short Form of Agreement Between Owner and Architect

**Minnesota State Colleges and Universities AIA Document B105
–2017,
Standard Form of Agreement Between Owner and Architect
as currently amended by the Owner
(hereinafter "AIA Document B105-2017")**

AGREEMENT effective date and end date:

See B105 Project Attachment to Minnesota State Colleges and Universities AIA Document B105-2017 (hereinafter referred to as "B105 Project Attachment")

BETWEEN the Owner:

State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities
See B105 Project Attachment

and the Architect:

(Paragraph deleted)

See B105 Project Attachment

for the following Project:

(Paragraphs deleted)

See B105 Project Attachment

The Owner and Architect agree as follows.

This Agreement is based on the Initial Information set forth in B105 Project Attachment. The word "Architect" is used herein to identify the person or organization named above and includes in its meaning an Engineer if an Engineer is the primary design professional for the Project.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide architectural services for the Project as described in this Agreement. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project.

§ 1.2 Project design shall conform to the Owner's Facilities Design Standards, hereinafter "Design Standards", or approved variance therefrom. The Design Standards are available on line at the Owner's facilities management Web site. Project documentation shall conform to the Owner's online Project Management Manual for Design and Construction, hereinafter "eManual".

§ 1.3 Schematic/Design Development Design Phase: The Architect shall review the Owner's scope of work, Owner provided reports and surveys, budget, and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. Upon the Owner's

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.

approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides.

§ 1.4 Construction Documentation Phase: Prepare Project drawings and specifications per the current Minnesota State Facilities Design Standards as applicable. Include Division 0 documents for Informal Bid Projects from the Minnesota State Facilities Web site, prevailing wage rates for the county where work is to be performed from the Department of Labor and Industry web site, and specification as applicable to the specific project scope of work.

§ 1.4.1 Formal Construction Documentation shall include:

- Project Manual: Provide technical specifications for each division and section that applies with emphasis on language so that the prescribed quality of all materials, products, components, and workmanship requirements are clear and unambiguous. Include a separate title page, table of contents, drawing schedule, and Division 0 documents.
- Provide an updated estimated construction budget.

(Paragraph deleted)

- Prepare all drawings and specifications necessary to convey the exact scope of the work and the full intent of the design.

Prepare all Construction Documents using computer aided design and drafting technology in an electronic data exchange file format acceptable to Minnesota State Colleges and Universities. All drawings and specifications shall conform to Minnesota State Facilities Design Standards and adhere to all applicable building, life safety, and energy codes.

§ 1.4.2 Bid & Award: The Architect shall prepare Bidding Documents based on approved Construction Documents and documents designated by the Owner. Coordinate bid dates and times with the campus personnel where the project is located. Assist the Owner in filing Bid Documents required for the approval of governmental authorities and to selected bidders. Assist the Owner by providing Bid Documents to selected bidders in order to obtain bids. Conduct Pre-bid meeting, answer questions, provide meeting notes, and provide addendum in response to questions or discrepancies on the Bid Documents. Provide bid tab and provide award recommendations to the Owner.

§ 1.4.3 Construction Administration:

- Schedule and conduct Pre-construction, Construction (progress), and Pre-installation Meetings. Provide minutes for each meeting.
- Verify all required permits are obtained by the Contractor.
- Provide review and approve submittals.
- Review and take action to reject, correct or certify Contractor's pay application within seven (7) days.
- Review Proposal Requests, initiate Construction Change Directives and Change Orders.
- Perform periodic observation to verify construction conformance with Minnesota State Facilities Design Standards and Construction Documentations.
- Coordinate sub-consultant inspection and testing if applicable.

§ 1.4.4 Project Closeout: Conduct inspection(s) for Substantial Completion(s), provide written punch list(s). Coordinate and document receipt of warranties, operation and maintenance manuals. Provide "As-built" documents to the C/U Project Manager and the system office in an electronic format acceptable to the Owner. Coordinate Project Final Closeout(s) including verify completion of punch list(s) and final pay application submittal.

§ 1.5 During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress

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of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services.

(Paragraphs deleted)

ARTICLE 3 COPYRIGHTS AND LICENSES

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

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

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

§ 3.4 The Architect represents and believes that MATERIALS produced or used under this Agreement do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names.

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

§ 3.6 Transmission and use of Instruments of Service or any other information or documentation in digital form shall be in accordance with Owner's e-Manual.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

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

§ 4.2 Either the Architect or the Owner may terminate this Agreement after giving no less than thirty (30) days' written notice if the other party substantially fails to perform in accordance with the terms of this Agreement through

no fault of the party initiating the termination and the cause for such termination is not corrected within such thirty (30) day time period.

§ 4.3 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

ARTICLE 5 MISCELLANEOUS PROVISIONS

(Paragraphs deleted)

§ 5.1 Jurisdiction and Venue: This Agreement shall be governed by the law of the State of Minnesota. Except as otherwise provided in this Agreement, venue for all legal proceedings, arising from this Agreement, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, State of Minnesota. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

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

§ 5.3 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Architect shall incorporate any information provided by the Owner, through reports and surveys, into their documentation to inform the Contractor of the hazards and their location.

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

§ 5.5 LIABILITY

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

§ 5.6 MINNESOTA STATUTES §181.59.

The CONSULTANT will comply with the provisions of Minnesota Statutes §181.59 which require: 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 CONSULTANT agrees: (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no CONSULTANT, material supplier, or vendor, shall, by reason or 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 CONSULTANT, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in 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 or conditions of this contract.

§ 5.7 GOVERNMENT DATA PRACTICES ACT.

The requirements of Minnesota Statutes § 13.05, subd. 11 apply to this contract. The CONSULTANT and Minnesota State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by Minnesota State in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the CONSULTANT in accordance with this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the CONSULTANT or Minnesota State.

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In the event the CONSULTANT receives a request to release the data referred to in this clause, the CONSULTANT must immediately notify Minnesota State. Minnesota State will give the CONSULTANT instructions concerning the release of the data to the requesting party before the data is released.

§ 5.8 STATE AUDITS: Under Minn. Stat. § 16C.05, subd. 5, the CONSULTANT's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

§ 5.8 SURVIVAL OF TERMS. The following clauses survive the expiration, cancellation or termination of this contract: Liability; Publicity; Data Disclosure; Government Data Practices Act; Copy Rights and Licenses; Jurisdiction and Venue; and State Audits.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

§ 6.1 The Architect's Compensation shall be:

See B105 Project Attachment

§ 6.2 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include only certain expenses incurred by the Architect and the Architect's consultants directly related to the project as follows:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
(Paragraphs deleted)
- .2 Owner requested printing, reproductions, plots, and standard form documents that are not already included in and required to be supplied by the Architect under this Agreement; or
- .3 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner that are not already included in and required to be supplied by the Architect under this Agreement.

§ 6.3 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants without any markup.

§ 6.4 Upon presentation of the Architect's invoice, payments by the Owner shall be made in accordance with the provisions contained in Minnesota Statute 16A.124.

§ 6.5 At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond the final completion date stated in this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS

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

§ 7.2 This Agreement is comprised of the following documents:

- .1 AIA Document B105™-2017, Standard Form Agreement Between Owner and Architect
- .2 B105 Project Attachment
- .3 The terms and conditions contained in the Request for Proposal (RFP) for this Project, all addenda to the RFP, and the Architect's proposal.

§ 7.3 The Architect shall, at its sole cost and expense, maintain the insurance specified in this Section 7.3 for the duration of this Agreement or upon termination of this Agreement. Such insurance shall be placed with insurers that have an A.M. Best rating of A- (minus) and a Financial Size Category of Class VII, or better, and are licensed to do business in the State of Minnesota.

§ 7.3.1 GENERAL LIABILITY:

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

\$2,000,000 - per occurrence

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

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

The following coverage shall be included in such insurance:

Premises and Operations Bodily Injury and Property Damage

Personal Injury and Advertising Injury

Products and Completed Operations Liability

Contractual Liability as provided in Insurance Services Office (ISO) form CG 00 01 10 01 or its equivalent, and as applicable

Pollution exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – CG 00 01 10 01 or equivalent

Independent Contractors (let or sublet work)

A Waiver of Subrogation in favor of the Owner

Coverage will not contain any restrictive endorsement(s) excluding or limiting Broad Form Property Damage (BFPD) or Explosion, Collapse, Underground (XCU).

§ 7.3.2 Automobile Liability:

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

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

The following coverages shall be included in such insurance:

Owned, Hired and Non-owned

Waiver of Subrogation in favor of the Owner

§ 7.3.3 Umbrella Liability:

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

§ 7.3.4 Workers' Compensation:

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

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

Coverage C. All States coverage.

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

A Waiver of Subrogation in favor of the Owner.

§ 7.3.5 Valuable papers:

The Architect shall maintain valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed and electronic documents on an all-risk basis in an amount sufficient to cover the cost of research, re-creation or reconstruction of valuable papers or records related to the Project for a minimum of six years from the end of the contract.

§ 7.3.6 Professional Liability:

The Architect shall maintain professional liability insurance covering negligent acts, errors or omissions, arising out of performance of, or the failure to perform, any services included in this Agreement. Additionally, the Architect shall

require its consultants and their sub-consultants, if any, to maintain applicable professional liability insurance. Unless otherwise specified, the minimum amounts for such insurance shall be as follows:
Minimum limit of liability of \$2,000,000 per claim.
\$2,000,000 annual aggregate.

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

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

§ 7.3.7 Additional Insured Obligations.

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

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

§ 7.3.7.3 The requirements contained in this Section 7.3 establishes minimum insurance requirements. It is the sole responsibility of the Architect to determine the need for and to procure additional insurance that may be needed in connection with this Agreement.

§ 7.3.7.4 Each such insurance policy, except for the professional liability policy and the worker's compensation policy, shall name the Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota as "Additional Insured", but only with respect to claims arising out of the Architect's negligence or for the negligence of those for whom the Architect is responsible for both ongoing and completed operations, by endorsement, ISO Forms CG 20 10 and CG 20 37 or their equivalent.

§ 7.3.8 Certificates of Insurance

§ 7.3.8.1 Certificates of Insurance acceptable to the Owner shall be submitted prior to commencement of the work under this Agreement and from time to time thereafter upon written request of the Owner for as long as such insurance is required to be maintained under this Agreement. Such Certificates and the insurance policies shall contain a provision that coverage afforded under these policies shall not be cancelled, modified, terminated, allowed to lapse, or be modified in a material way without at least thirty (30) days advanced written notice to the Owner.

§ 7.3.8.2 If Architect receives a cancellation notice from an insurance carrier affording coverage herein, Architect agrees to notify the Minnesota State Colleges and Universities within five (5) business days with a copy of the cancellation notice, unless contractors' 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 Minnesota State Colleges and Universities.

§ 7.3.8.3 A full-certified copy of any policy and endorsements obtained by the Architect as required above, may be requested by the Owner at any time, and upon such request the Architect shall provide the requested policy or endorsement to the Owner.

§ 7.3.9 Waivers of Subrogation

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The Architect and the Architect's consultants and sub-consultants of all tiers, and the Owner and the Owner's consultants of all tiers waive all rights against each other and against the Contractor and the Contractor's subcontractors of all tiers for loss or damage to said property, materials, supplies and equipment. The Architect's obligations under this Section 7.5.9 shall survive completion of Architect's services under this Agreement or the termination of this Agreement.

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APPROVED:

This Agreement shall be effective on date identified on page one of the B105 Project Attachment.

OWNER

Signature and date are executed on the Project Attachment

Printed name and title are identified on the Project Attachment

FORM AND EXECUTION

Signature and date are executed on the Project Attachment

Printed name and title are identified on the Project Attachment

ARCHITECT

Signature and date are executed on the Project Attachment

Printed name and title are identified on the Project Attachment

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