



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** effective date and end date:

See B101 Project Attachment to Minnesota State Colleges and Universities  
AIA Document B101-2017 (hereinafter referred to as "B101 Project Attachment")

**BETWEEN** the Owner:

State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges  
and Universities  
See B101 Project Attachment

and the Architect:

See B101 Project Attachment

for the following Project:

*(Paragraphs deleted)*

See B101 Project Attachment

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in B101 Project Attachment. Enumeration in B101 Project Attachment is keyed to enumeration in this AIA Document B101-2017 agreement. Terms in this Agreement shall have the same meaning as those in the Minnesota State Colleges and Universities AIA Document A201-2017, General Conditions of the Contract for Construction, as currently amended by the Owner (hereinafter referred to as A201-2017). The word "Architect" is used herein to identify the person or organization identified in B101 Project Attachment and includes in its meaning an Engineer if an Engineer is the primary design professional for the Project.

§ 1.1.1 The Owner's program for the Project:  
See Section 1.1.1 of the B101 Project Attachment

§ 1.1.2 The Project's physical characteristics:  
See Section 1.1.2 of the B101 Project Attachment

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:  
See Section 1.1.3 of the B101 Project Attachment

§ 1.1.4 The Owner's anticipated design and construction milestone dates:  
(Paragraphs deleted)  
See Section 1.1.4 of the B101 Project Attachment]

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
(Paragraph deleted)  
Competitive bid (referred to as Design/Bid/Build)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

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*(Paragraphs deleted)*

See Section 1.1.6 of the B101 Project Attachment

*(Paragraph deleted)*

§ 1.1.7 The Owner identifies the following representative(s) in accordance with Section 5.3:

*(Paragraphs deleted)*

See Section 1.1.7 of the B101 Project Attachment

§ 1.1.8 The Owner's consultants required to review Architect's submittals to the Owner:

*(Paragraph deleted)*

See Section 1.1.8 of the B101 Project Attachment

§ 1.1.9 The

*(Paragraphs deleted)*

Owner's other consultants and contractors are:

See Section 1.1.9 of the B101 Project Attachment

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

*(Paragraphs deleted)*

See Section 1.1.10 of the B101 Project Attachment

§ 1.1.11 The Architect will retain the consultants identified:

See Section 1.1.11 of the B101 Project Attachment

*(Paragraphs deleted)*

§ 1.1.12 Other Initial Information on which the Agreement is based:

See Section 1.1.12 of the B101 Project Attachment

§ 1.2 The Owner and Architect may reasonably rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Transmission and use of Instruments of Service or any other information or documentation in digital form shall be in accordance with Owner's online Project Management Manual for Design and Construction, hereinafter "eManual".

*(Paragraph deleted)*

## **ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is duly licensed in the State of Minnesota to provide the services required by this Agreement or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects with experience practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2.1 The 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 "eManual".

§ 2.2.2 During each design phase, the Architect shall evaluate the Design Standards and request variances as applicable that the Architect believes will reduce costs, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner. The Architect shall further recommend any changes to the Owner's program or preliminary design for the Project that the Architect reasonably expects will reconcile the program, Project budget and Project schedule, provide a higher quality Project without exceeding the Project budget, or otherwise benefit the Owner. At the time of the Architect's submission to the Owner for the Owner's review and acceptance of, respectively, the Schematic Design Documents, the Design Development Documents, and the Construction Documents, the Architect shall certify that said documents have been reviewed for deviations from the Design Standards, and that to the best of the Architect's knowledge no such deviations exist except those for which a variance has been duly granted.

§ 2.2.3 The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations and codes and the Design Standards that may exist as of the date of this Agreement.

§ 2.2.4 Whenever this Agreement provides that the Architect may rely on information provided by the Owner, from any source, such reliance shall be reasonable based on the Architect's standard of care contained in this Section 2.2.

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

§ 2.2.6 The Architect represents and acknowledges that it has visited the site and reviewed the Owner's requirements, and that all schedules prepared for and compensation to be supplied for the Project are appropriate.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect and consultants with respect to the Project.

§ 2.3.1 The identified representative shall be acceptable to the Owner. The Architect shall not change such representative without the Owner's written consent.

§ 2.3.2 The Architect shall provide its services directly or through consultants retained and paid by the Architect. The Architect's consultants are identified in the B101 Project Attachment. Prior to the execution of this Agreement, the Architect shall notify the Owner of the identity of all consultants retained at the Architect's expense. The Architect shall further notify the Owner in writing immediately upon any changes in the identity of these consultants or other consultants retained during the term of this Agreement and the Architect shall not change the consultants listed in the B101 Project Attachment or use other consultants in performing its obligations under this Agreement, without the Owner's written consent. The Architect shall be responsible for the performance of its consultants. The Architect shall ensure that their consultants abide by all of the terms and conditions of this Agreement and, when applicable, are duly licensed and authorized to transact its business in the State of Minnesota. The Owner shall have authority to approve or disapprove any changes to the firms and specific persons retained by the Architect for the Project, which approval shall not be unreasonably withheld.

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

§ 2.5 The Architect shall, at its sole cost and expense, maintain the insurance specified in this Section 2.5 for the duration of this Agreement and for a period of at least three years after the date of Substantial Completion or earlier termination of this Agreement. Such insurance shall be placed with insurers that have an A.M. Best rating of A- (minus) and a Financial Size Category of Class VII, or better, and are licensed to do business in the State of Minnesota.

**§ 2.5.1 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:

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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/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).

#### § 2.5.2 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

#### § 2.5.3 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.

#### § 2.5.4 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.

#### § 2.5.5 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.

#### § 2.5.6 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 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.

#### **§ 2.5.7 Additional Insured Obligations.**

**§ 2.5.7.1** 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.

**§ 2.5.7.2** 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.

**§ 2.5.7.3** The requirements contained in this Section 2.5 establishes minimum insurance requirements. It is the sole responsibility of the Architect to determine the need for and to procure additional insurance that may be needed in connection with this Agreement.

**§ 2.5.7.4** 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.

#### **§ 2.5.8 Certificates of Insurance**

**§ 2.5.8.1** 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.

**§ 2.5.8.2** 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 Architect'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 Minnesota State Colleges and Universities.

**§ 2.5.8.3** 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.

#### **§ 2.5.9 Waivers of Subrogation**

To the extent that loss or damage to property, materials, supplies and equipment is covered by insurance pursuant to the provisions of AIA Document A201 –2017 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 Architect and the Architect's subcontractors of all tiers for loss or damage to said property, materials, supplies and

equipment. The Architect's obligations under this Section 2.5.9 shall survive completion of Architect's services under this Agreement or the termination of this Agreement.

### **§ 2.6 Changes in Service**

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

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

**§ 2.6.2.1** A material change in the instructions or acceptances/approvals given by the Owner that necessitate revisions in the Instruments of Service,

**§ 2.6.2.2** Post Agreement enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service, and which could not reasonably have been foreseen,

**§ 2.6.2.3** Decisions of the Owner not rendered in a timely manner that impact the cost of the Architect's performance,

**§ 2.6.2.4** A significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method,

**§ 2.6.2.5** A material failure of performance on the part of the Owner or the Owner's consultants or contractors,

**§ 2.6.2.6** Material preparation for and attendance at a dispute resolution proceeding or a legal proceeding, except where the Architect is party thereto and,

**§ 2.6.2.7** Material changes in the information contained in Article 1.1 that is not the result of any of the actions of the Architect or caused by the Architect.

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

**§ 3.1** The Architect's Basic Services consist of those described in this Article 3 and B101 Project Attachment and include usual and customary civil, structural, mechanical, electrical and telecommunications engineering services, landscape architecture services, and cost estimating services. Services not set forth in the Scope of Architect's Basic Services Section 3.1 of the B101 Project Attachment are Supplemental Services. Travel and subsistence expenses actually and necessarily incurred by the Architect and their sub-consultants in performance of this contract shall be included in the Architect's fee for Basic Services.

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

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to reasonably rely on the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information. The Architect shall have primary responsibility for coordinating and accommodating in the design documents, locations of furniture, fixtures, equipment, cabling, conduit, wires, and other building components designed by the Architect, based on information provided by the Owner.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for:

- .1 The Owner's review,
- .2 The performance of the Owner's consultants, and
- .3 Approval of submissions by authorities having jurisdiction over the Project.

Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitutions, or for the Owner's acceptance of non-conforming work, made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall address and respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

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

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

§ 3.1.9 The Owner is not responsible to identify information, survey services, or reports required or needed for the Project.

§ 3.1.10 The design of civil, structural, mechanical, electrical, telecommunications and landscape systems shall be performed by qualified engineers and architects employed by or under the direction of the Architect. Direct communications are hereby authorized between the Architect's consultants and the Owner. The Architect shall be informed regarding the substance of any such communication. The Owner shall not direct the Architect's consultants. When the Architect believes conformance requirements are inconsistent with other obligations of the Architect in this Agreement, the Architect shall present the inconsistency to the Owner for resolution.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the Predesign and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall evaluate the Owner's Predesign, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall promptly notify the Owner of:

- .1 Any inconsistencies discovered in the information,
- .2 Other information or consulting services that may be reasonably needed for the Project, and
- .3 Any issues conforming to the Owner's Design Standards.

§ 3.2.3 The Architect shall present preliminary findings of their evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's consideration, preliminary design(s) illustrating the scale and relationship of the Project components.



§ 3.2.5 The Schematic Design Documents shall consist of drawings, specifications and other documents required by the Minnesota State Facilities Design Standards; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall review sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall prepare a written report discussing energy conservation measures and techniques to be employed consistent with the Design standards and Minnesota B3 sustainable building guidelines, pursuant to Minnesota Statutes 16B.325 or the Architect's proposed variances from such standards. Such written report shall include an analysis of the cost savings attributable to the incorporation of such measures and techniques.

*(Paragraphs deleted)*

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

§ 3.2.5.3 The Architect shall consider the life cycle cost of materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 For projects involving existing construction, the Architect shall verify significant existing conditions to be included in the Project and shall incorporate this information into the written description required by Section 3.2.5.

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

§ 3.2.8 The Architect shall, at appropriate times, meet with the Owner and/or the Owner's consultants to discuss Schematic Design considerations currently being evaluated and Schematic Design conformance to the Design standards.

§ 3.2.9 As required by the Owner, the Architect shall submit to the Owner and the Owner's consultants, copies of the Schematic Design Documents, in the format and quantities as required by Section 11.8.1 of the B101 Project Attachment and request the Owner's approval.

§ 3.2.9.1 The Schematic Design submittal shall include a detailed estimate of the Cost of the Work prepared in accordance with Article 6.

§ 3.2.9.2 The Architect shall provide an updated project schedule in Schematic Design submittal that reflects the impact of the Cost of the Work and academic calendar.

§ 3.2.10 If identified in Section 1.1.4 of the B101 Project Attachment, the Architect shall prepare formal presentation materials for the Schematic Design and assist in the presentation to the Minnesota State system office for approval.

§ 3.2.11 After receiving the Owner's written approval of the Schematic Design Documents, the Architect may submit request for payment for the balance of Architect's schematic design fee.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's written authorization and direction to precede, the Architect shall prepare Design Development Documents.

*(Paragraphs deleted)*

§ 3.3.2 The Design Development Documents shall illustrate and describe the further development of the approved Schematic Design Documents and address any issues identified in the approval.

§ 3.3.2.1 Design Development Documents shall consist of drawings, specifications and other documents required by the Design Standards; and may include architectural, civil, structural, mechanical, electrical, telecommunications and landscape systems that appropriately describe the Project construction.

§ 3.3.3 The Architect shall meet at least once, or more if required, with governmental authorities having jurisdiction, including local building and fire code officials to review the Design Development Documents and to identify and address all non-compliance with code(s).

§ 3.3.4 The Architect may at appropriate time(s) meet with the Owner and the Owner's consultants to discuss Design Development considerations and conformance to the Design standards. Any variance requests to the Design Standards are required to be approved by the Minnesota State System Office prior to Design Development submittal.

§ 3.3.5 As required by the Owner, the Architect shall submit to the Owner and the Owner's consultants, copies of the Design Development Documents, in the format and quantities as required by Section 11.8.1 of the B101 Project Attachment and request the Owner's approval.

§ 3.3.5.1 The Design Development submittal shall include a detailed estimate of the Cost of the Work prepared in accordance with Article 6.

§ 3.3.5.1.1 The Architect shall recommend a list of deduct alternates for owner to consider to address market fluctuations at the time of bidding.

§ 3.3.5.2 The Architect shall provide an updated project schedule in Design Development submittal that reflects the impact of the Cost of the Work and academic calendar.

§ 3.3.6 After receiving the Owner's written approval of the Design Development Documents, the Architect may submit request for payment for the balance of Architect's Design Development fee.

#### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's written authorization and direction to precede, the Architect shall prepare Construction Documents.

§ 3.4.2 The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and address any issues identified in the approval. The Architect shall be responsible for Project design conformance to all applicable statutes and codes.

§ 3.4.2.1 The Construction Documents shall consist of Drawings and Project Manual, as required by the Design Standards, setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. Construction Document drawings may include architectural, civil, structural, mechanical, electrical, telecommunications and landscape systems that appropriately describe the Project construction.

§ 3.4.2.2 Project Manual shall incorporate the Owner's Division 00 documents, AIA Document A201-2017, specifications, and forms.

§ 3.4.3 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. If required, the Architect shall meet with governmental authorities having jurisdiction to address issues not resolved in Design Development Documents.

*(Paragraph deleted)*

§ 3.4.4 The Architect may at appropriate time(s) meet with the Owner and the Owner's consultants to discuss Construction Documents considerations and conformance to the Design standards. Any variance requests to the

Design Standards are required to be approved by the Minnesota State System Office prior to Construction Document submittal.

§ 3.4.5 The Architect shall submit to the Owner and the Owner's consultants, copies of the 99% complete Construction Documents, in the format and quantities as required by Section 11.8.1 of the B101 Project Attachment and request the Owner's approval.

§ 3.4.5.1 The Construction Documents submittal shall include a final estimate of the Cost of the Work within the Owner's budget prepared in accordance with Article 6.

§ 3.4.5.1.1 The Architect shall include the list of deduct alternates in priority order approved by the Owner in Construction Documents. The deduct alternates are not intended to be used to bring the Cost of Work within the budget.

§ 3.4.5.2 The Architect shall provide an updated project schedule in Construction Documents submittal.

§ 3.4.6 The Architect shall provide written responses to address all review comments provided by the Owner and the Owner's consultants and modify the Construction Documents accordingly for Owner's approval. If required by the Owner, the Architect shall resubmit all or portions of the Construction Documents for additional review and approval.

3.4.7 The Architect shall furnish approved Construction Documents to governmental authorities having jurisdiction for their written approval. If required, the Architect shall review the design with representatives of governmental authorities having jurisdiction, the State Department of Health and fire code officials. The Architect is responsible for revising the Construction Documents to conform to all applicable statutes and codes.

§ 3.4.8 After receiving the Owner's written approval of the Construction Documents and issuing required documents to governmental authorities having jurisdiction, the Architect may submit request for payment for the balance of Architect's Construction Documents fee.

## § 3.5 Procurement Phase Services

### § 3.5.1 General

*(Paragraph deleted)*

§ 3.5.1.1 Based on the Owner's written authorization and direction to precede, the Architect Shall proceed with the Procurement Phase.

§ 3.5.1.2 The Architect shall prepare Bidding Documents based on approved Construction Documents.

§ 3.5.1.3 Bidding Documents shall consist of bidding requirements and proposed Contract Documents, and other documents as the Owner may designate which include:

- .1 Information that describes the time, place, and procedure for bidding
- .2 Bidding forms and instructions
- .3 Pre-bid conference notification if applicable
- .4 Prevailing wage rates and requirements

§ 3.5.1.4 The Architect shall upload finalized bidding documents into Owner's Enterprise Project Management System for the Owner to issue.

### § 3.5.2 Competitive Bidding

§ 3.5.2.1 As directed by the Owner, the Architect shall assist the Owner in bidding the Project by:

- .1 Informing prospective bidders of posted bidding documents.
- .2 Organizing and conducting a pre-bid conference for prospective bidders, and documenting all discussions and material in the form of addenda for Owner to issue.
- .3 Preparing responses to questions from prospective bidders in the form of addenda for Owner to issue, and
- .4 Providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda for Owner to issue.

**§ 3.5.2.2**

*(Paragraphs deleted)*

If the Bidding Documents permit substitutions, the Architect shall consider requests for substitutions and prepare addenda identifying approved substitutions for Owner to issue.

**§ 3.5.2.3** The Architect shall review bid results and recommend bid award to the Owner.

*(Paragraphs deleted)*

**§ 3.5.2.4** After the bid award, the Architect shall create conformance documents that incorporate all addenda into Bidding Documents. The Conformance Documents shall be completed no later than two weeks after the Notice to Proceed to the Contractor, but prior to the Pre-construction meeting, whichever is earlier, unless the Owner determines the conformance documents are not required.

**§ 3.6 Construction Phase Services**

**§ 3.6.1 General**

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. To the extent of any conflict between the terms of this Agreement, and agreements between the Owner and the other entities the interpretation most favorable to the Owner shall control.

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

**§ 3.6.1.3** The Architect's responsibility to provide Construction Phase Services commences with the Owner's issuance to the Contractor of a notice to proceed, and shall terminate at the later date of:

- .1 365 days after the Architect's issuance to the Owner of the final Certificate for Payment to the Contractor, or
- .2 Upon the Architect's completion of services.

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

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

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

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

§ 3.6.1.8 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents, and shall be in writing or in the form of drawings.

§ 3.6.1.9 The Architect shall render in writing within a reasonable time an opinion as to claims, disputes or other matters in question between the Owner and Contractor as provided in the AIA Document A201-2017 Section 1.1.7. However, the Architect's opinions on matters relating to aesthetic effect will be the final determination, if consistent with the intent expressed in the Contract Documents.

§ 3.6.1.10 The Architect shall before the beginning of construction conduct one pre-construction conference, and shall prepare and distribute appropriate records and minutes of such conferences and meetings unless otherwise directed by the Owner.

§ 3.6.1.11 The Architect together with consultants as required shall after the beginning of construction of the Project, but prior to beginning of specific work of the Project, administer pre-installation conferences as defined by the Construction Documents. See Section 3.6.1.11 of the B101 Project Attachment.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect, along with its consultants, shall conduct on-site observations of the Project construction and hold construction progress meetings at intervals as stated in the B101 Project Attachment. The Architect shall become familiar with the progress, the quality of the portion of the Work completed and determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed and prepare and forward to the Owner a field report for each on-site observation within three working days after the completion of each such visit, with such report being in the form of AIA Form G711 or any equivalent form. The Architect shall also report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. See Section 3.6.2.1 of the B101 Project Attachment.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Contractor. The Architect's decisions on matters relating to aesthetic effect shall be consistent with the intent expressed in the Contract Documents or unless otherwise directed by the Owner.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

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

§ 3.6.2.7 The Architect acknowledges that the Owner has independent rights to reject or stop the Work if the Contractor fails to correct Work that does not conform to the Contract Documents, which rights do not give rise to a duty or responsibility of the Owner to the Architect or any other individual or entity.

§ 3.6.2.8 Upon the Owner's request, the Architect shall advise the Owner with respect to Claims by the Contractor, and the Architect shall render initial decisions on Claims between the Owner and the Contractor as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect, within seven (7) days of receipt of a payment application from the Contractor, shall review and take action by:

- .1 Making minor adjustments to the amounts requested due to errors,
- .2 Reject the payment application and return to the Contractor for revision, or
- .3 Approve the amounts due the Contractor and issue certificate in such amounts.

The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the Project site and evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to:

- .1 An evaluation of the Work for conformance with the Contract Documents,
- .2 Results of subsequent tests and inspections,
- .3 Correction of minor deviations from the Contract Documents prior to completion, and
- .4 Specific qualifications expressed by the Architect at the time of approval.

§ 3.6.3.2 The issuance of a Certificate for Payment shall be a representation that the Architect has confirmed that the Contractor has submitted all required data and information with its Application for Payment, but shall not be a representation that the Architect has:

- .1 Made exhaustive or continuous on-site inspections to check the quality or quantity of the Work,
- .2 Reviewed construction means, methods, techniques, sequences or procedures,
- .3 Reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or
- .4 Ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.3.4 The Architect shall not issue the final certificate for payment until the Contractor has satisfied all of the conditions under Section 9.10 of the AIA Document A201-2017.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall promptly review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 In accordance with the Architect's approved submittal schedule, the Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional and such drawings and submittals must bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, subject to the standard of care and scope of services under this Agreement.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may authorize minor changes in the Work (also referred to as an Architect's Supplemental Instruction) that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time.

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

§ 3.6.5.2 The Architect shall prepare, maintain and provide copies of such records to the Owner and the Contractor for:

- .1 A continuous listing of all Change Orders, both those proposed and those executed,
- .2 A continuous listing of all Construction Change Directives, and
- .3 A continuous listing of all approved minor changes in the Work

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

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

§ 3.6.5.5 The Architect shall maintain records relative to changes in the Work, and prior to approving final pay application from the Contractor, the Architect shall deliver to the Owner project record documents as required by Section 3.6.5.5 of the B101 Project Attachment.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

#### For Substantial Completion:

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- .1 Conduct inspections to determine the date or dates of Substantial Completion and the date of final completion,
- .2 Issue Certificate(s) of Substantial Completion signed by Contractor, Architect and Owner with attached punchlist of outstanding work,
- .3 Forward to the Owner, for the Owner's review and the Owner's records, written warranties and related documents required by the Contract Documents and received from the Contractor; and
- .4 The Architect shall prepare Project Record Drawings and Specifications based on the original Project Drawings and Specifications that are revised to reflect:
  - .a All Bidding Phase addenda (referred to as Conformance Set),
  - .b All executed Change Orders to the Project construction contract,
  - .c Construction Manager's as-constructed drawings (referred to as Redline Set), and
  - .d All minor changes in the Work authorized by the Architect.

**For Final Completion:**

- .1 Issue a final Certificate for Payment based upon a final inspection and date of Final Completion indicating the Punchlist Work is complete and complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Contractor to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, and a Certificate of Occupancy secured, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor:

- .1 Consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment, and
- .2 Any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation:

- .1 Inspect the Project,
- .2 Provide assistance in enforcing any warranty issued by the contractor,
- .3 Conduct a meeting with the Owner to review the facility operations and performance, and
- .4 Inform the Contractor and Owner, in writing, of the results of this review and shall make appropriate recommendations.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

Supplemental Services are not included in Basic Services but may be required for the Project. The Architect shall provide Supplemental Services only if listed in Section 4.1 of the B101 Project Attachment as the Architect's responsibility, in which case the Owner shall compensate the Architect as provided in Section 11.2.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 may entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the Additional Services, listed in this section 4.2.1 of the B101 Project Attachment, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances



giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws, or regulations or official interpretations;
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .4 Redesign requested by the Owner for changes in the scope of the Project Work after the Owner has approved Construction Documents, except to the extent required under Section 6.7,

*(Paragraph deleted)*

- .5 Preparation for and attendance at a public presentation, meeting or hearing,
- .6 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto,

*(Paragraph deleted)*

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

§ 4.2.2 If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this Section 4.2.1 or for other services requested by the Owner, the Architect shall notify the Owner in writing with reasonable promptness and:

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*(Paragraphs deleted)*

Explain the basis of the Architect's belief that such services are outside the scope of the Basic Services and Additional Services, and

*(Paragraph deleted)*

- .2 Provide an estimate of the probable cost of such services and probable impact, if any, on the schedules.

§ 4.2.3 The Architect shall

*(Paragraphs deleted)*

not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization shall either (i) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (ii) deny that the Architect is entitled to additional compensation and direct the Architect to proceed with the services, in which case the Architect may pursue a claim for additional compensation under Article 8. The Owner's determination that the Architect is not entitled to additional compensation for such services shall not relieve the Architect of its responsibilities under this Agreement.

*(Paragraphs deleted)*

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall furnish surveys as described in Sections 5.4 and 5.5 and other information prepared by third parties for the Project to the extent the Owner deems necessary for the performance of the Architect's services. In addition, the Owner may provide the Architect access to the Owner's records, which may contain information about the site and adjacent land improvements that was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information made available to the Architect from the Owner's records. The Architect shall not rely on such information without independently confirming that, in the Architect's professional judgment and subject to the duty of care contained in Section 2.2, the information is reliable.

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

§ 5.3 The Owner shall identify Owner's Designated Project Manager authorized to act on the Owner's behalf with respect to the Project. The Architect shall not take direction from or act upon requests for modifications or changes in

services by anyone other than the Owner. References in this Agreement to "Owner" shall also include "Owner's Designated Project Manager" and "Owner's Project Representative".

§ 5.4 The Owner shall, upon the Architect's reasonable request, and to the extent listed characteristics can be determined, furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark(s).

§ 5.5 The Owner shall, upon the Architect's reasonable written request and the Owner's determination that the Architect needs the requested services, furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall, subject to Section 3.1.2, coordinate the services of its own consultants with those services provided by the Architect. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall advise the Owner of the requirements of such tests and shall consult with the Owner in selecting and ordering services from consultants who provide such tests, inspections and reports.

§ 5.8 The Owner shall provide written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the documents provided to the Architect by the Owner or in any of the Architect's Instruments of Service, provided that the Owner shall not become responsible for, and the Architect shall not be released from, liability for such faults for defects by reason of any failure of the Owner to discover or report any such faults for defects.

§ 5.9 Except, as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall promptly provide the Owner with copies of any direct communications with the Contractor regarding any performance by the Contractor under the Construction Documents, including but not limited to requests for information and change order proposals that may affect the design or cost of the Project or may require approval or other actions by the Owner.

§ 5.10 If requested by the Architect, the Owner may provide the Architect a copy of the executed agreement between the Owner and Contractor.

§ 5.11 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.12 Whenever this Agreement, the AIA Document A201-2017 or any other Construction Document refers to the knowledge of the Owner, facts known to the Owner, or documents or information in the possession of the Owner, such references shall be limited to matters actually known by or items actually in the possession of the Owner.

*(Paragraphs deleted)*

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit, and contingencies. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

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

§ 6.3.1 The Architect shall prepare its estimates of the Cost of the Work in a format based on the standard Construction Specifications Institute divisions of the Work.

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

- .1 Providing information the consultant reasonably requires to perform its services;
- .2 Reviewing design alternatives;
- .3 Reviewing estimates of the Cost of the Work and recommendations for adjustments to the Project program, design, schedule and budget; and
- .4 Incorporating recommendations approved by the Owner into the design or Construction Documents.

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

§ 6.5 If, through no fault of the Architect, the Bidding Phase has not commenced within 90 days of the milestone date identified in Section 1.1.4 of the B101 Project Attachment, the Owner shall consider adjustments to the Owner's Budget for the Cost of the Work in order to reflect changes in the general level of prices in the applicable construction market.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid, the Owner may:

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*(Paragraphs deleted)*

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Terminate in accordance with Article 9; or,

- .2 In consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work

§ 6.7 If the Owner chooses to proceed under Section 6.6.2, the Architect, without additional compensation, shall:

- .1 Modify, subject to the Owner's written acceptance, the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services,
- .2 Provide the services called for in Article 3, and
- .3 Pay the costs related to modification and rebidding.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service 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, models, 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.

§ 7.2 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.

§ 7.3 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.

*(Paragraph deleted)*

§ 7.4 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. The Architect shall indemnify and defend the Owner at the Architect's expense from any action or claim brought against the Owner to the extent that it is based on a claim that all or parts of the Materials infringe upon the intellectual property rights of another. The Architect shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of this Agreement, amendments and supplements thereto, which are attributed to such claims or actions. This paragraph shall not apply to claims that arise from Materials specifically required by the Owner, or to portions of the Materials which the Owner directed the Architect to include within said Materials.

§ 7.5 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

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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.

## **ARTICLE 8 CLAIMS AND DISPUTES**

§ 8.1 Intentionally not used.

*(Paragraphs deleted)*

### **§ 8.2 Mediation**

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

§ 8.2.2 Intentionally not used.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally.

*(Paragraphs deleted)*

## **ARTICLE 9 TERMINATION OR SUSPENSION**

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

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

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

§ 9.4 Except as otherwise specifically provided in this Agreement, either party may terminate this Agreement upon not less than thirty (30) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination and the cause for such termination is not corrected within such thirty (30) day time period.

*(Paragraphs deleted)*

§ 9.5 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.

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

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

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

*(Paragraph deleted)*

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the laws of the State of Minnesota. Except as otherwise provided in this Agreement, 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.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, as amended by Owner ("AIA A201-2017").

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

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

§ 10.5 Nothing contained in this Agreement shall create:

- .1 A contractual relationship with, or
- .2 A cause of action in favor of, a third party against either the Owner or Architect, except that the Architect shall cooperate and work with the Owner's Project Representative as provided in the AIA A201-2017 and in the agreement between the Owner and the Owner's Project Representative.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. 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. The Architect assumes no responsibility for such information, or for its accuracy or completeness.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information. The Architect agrees not to use the name, logo, or any other marks (including but not limited to colors and music) owned by or associated with the Owner or the name of any representative of the Owner in any sales promotion work or advertising or any form of publicity without the advance written consent of the Owner in each instance.

§ 10.8 If the Architect or Owner receives information specifically designated by the Architect as "confidential" or "business proprietary," it shall handle such information in accordance with the provisions of the Minnesota Data Practices Act, Minnesota Statutes Chapter 13. The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate a state or federal law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants, similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

*(Paragraphs deleted)*

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

§ 10.10 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.

**§ 10.11** The Architect shall comply with Minnesota Statute §13.05, Subd. 11 Minnesota Government Data Practices Act as it applies to all data provided by the Owner in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Architect in accordance with this Agreement. The civil remedies of Minnesota Statute §13.08, apply to the release of the data referred to in this Agreement by either the Architect or the Owner. In the event the Architect receives a request to release any data referred to in this Section 10.11, the Architect shall immediately notify the Owner, and the Owner will give the Architect instructions concerning the release of the data to the requesting party before the data is released.

**§ 10.12** This Agreement shall not be valid or effective and the Architect shall have no obligation to commence work, nor the Owner to make payment, before an Agreement or purchase order for the Architect's services is fully executed.

**§ 10.13** The Architect shall use Minnesota State internet-based Enterprise Project Management System (EPMS) during the design and construction of the Project. The selected system is based upon software created by the firm, "e-Builder". Minnesota State will provide the Architect and sub-consultants with login access and initial software training for the selected Project representative(s) at no cost to the Architect. Except for licenses and initial training, Minnesota State assumes no responsibility for any real or potential costs associated with the use of the EPMS by the Architect and their design team members.

The functionality of this software includes, but is not limited to the electronic filing of documents and/or processing workflows for the following:

- .1 Agreement between Owner and Architect, and any amendments
- .2 Current Certificate of Insurance
- .3 Project correspondence and meeting minutes
- .4 Construction cost estimates
- .5 Project schedules including milestone dates
- .6 Design phase submittals and response to review comments
- .7 Design Standards variance requests
- .8 Bid documents, bid tabulations, evaluations and recommendations
- .9 Conformance documents for construction. (prepared and posted on or before the date of the pre-construction meeting)
- .10 Construction contract modifications, including Requests For Information (RFIs), Supplemental Instructions (SIs), Proposal Requests (PRs), Construction Change Directives (CCDs), and Change Orders (COs)
- .11 Financial correspondence, including invoices and Applications for Payment
- .12 Construction submittals, including construction schedules, product data, shop drawings, and samples
- .13 Certificate of Substantial Completion(s) with punchlist(s),
- .14 Construction closeout documents,
- .15 10-month warranty walk through documentation, and
- .16 Other Project related information.

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

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

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

**§ 10.16** The Architect agrees to comply with the provisions contained in Minnesota Statute §137.36, which requires the Architect to (1) pay any consultant that the Architect engages to perform any of the services to be performed under

this Agreement within 30 days of the Architect's receipt of payment from the Owner for undisputed services provided by the consultant, and (2) pay interest of 1.5 percent per month (or any part of a month) to the consultant on an undisputed amount not paid on time to the consultant. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Architect shall pay the actual penalty due to the consultant.

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

**§ 10.18** The Architect shall design the Project in a manner that it will comply with the understanding and interpretation of the current Americans with Disabilities Act and all rules, regulations and guidelines that implement and apply to such act.

## **ARTICLE 11 COMPENSATION**

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

See Section 11.1 of the B101 Project Attachment

**§ 11.1.1** Travel and subsistence expenses actually and necessarily incurred by the Architect and their sub-consultants in performance of this Agreement shall be included in the Architect's fee for Basic Services.

**§ 11.1.2** The Architect's Basic Services shall include printing of full sets of plans and specifications at each design phase and record documents in quantities as follows:

*(Paragraphs deleted)*

See Section 11.1.2 of the B101 Project Attachment

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

See Section 11.2 of the B101 Project Attachment

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the *(Paragraphs deleted)*

Architect's compensation shall be negotiated with the Owner.

**§ 11.3.1** If the construction contract award amount is lower than ninety percent (90%) of the Owner's budget for the Cost of the Work (the "Lower Limit"), the Owner may instruct the Architect to design scope changes to meet the Lower Limit without additional compensation. If the Lower Limit is exceeded, additional compensation shall be negotiated.

### **§ 11.4**

*(Paragraphs deleted)*

The Architect's total fee for all services of this Agreement, including basic and supplemental services listed in Articles 3.1 and 4.1 is:

See Section 11.4 of the B101 Project Attachment.

**§ 11.5** If the Owner increases the Cost of Work, the Architect's compensation will be based on percentage identified in Section 11.1. The Architect shall not receive any additional compensation for services provided in previously completed phases.

*(Table deleted)*

**§ 11.6** If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed.

*(Paragraph deleted)*

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§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below.

*(Paragraphs deleted)* See Section 11.7 of the B101 Project Attachment

*(Table deleted)*

**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional

*(Paragraphs deleted)*

Services.

§ 11.8.2 Reimbursable Expenses 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;
- .2 Fees for Owner requested printing, reproductions, plots, and standard form documents that are in excess of the printing requirements included in Basic Services; 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.

*(Paragraphs deleted)*

§ 11.8.3 Compensation For Reimbursable Expenses incurred by the Architect and the Architect's consultants shall be compensated by the Owner as follows:

See Section 11.8.3 of the B101 Project Attachment

§ 11.8.3.1 Compensation For Reimbursable Expenses shall be the expenses without any markup.

**§ 11.9 Payments to the Architect**

**§ 11.9.1 Progress Payments**

§ 11.9.1.1 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.

§ 11.9.1.2 The Architect shall provide complete documentation, including copies of all invoices paid by the Architect, for those expenses submitted for reimbursement.

**§ 11.9.2 Final Payment**

Prior to approving final invoice, the Architect shall:

- .1 Deliver to the Owner, Project Record Documents Drawings and Specifications as required by Section 3.6.5.5 of the B101 Project Attachment, and
- .2 Complete project data in B3 tracking tool.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

**§ 12.1 Audit**

§ 12.1.1 The Architect shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, which such accounting and control systems must be in a form acceptable to the Owner.

§ 12.1.2 The Owner and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Architect's information, materials, records or data relating to the Project, including but not limited to accounting records, written policies and procedures, subcontract files (excluding subcontracts, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets, correspondence, Change Order files (including but not limited to documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings receipts, purchase orders, vouchers, memoranda, information, materials, records or data relating to this Project ("records"). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and indirect

costs (including but not limited to overhead allocations) as they may apply to costs associated with this Agreement. In those situations where the Architect's Records have been generated from computerized data, the Architect agrees to and shall provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

§ 12.1.3 The Architect shall preserve the Records for a period of 10 years after final payment or for such longer period as required by any applicable law, provided, however, that if a Claim is asserted during said 10 year period then the Architect shall retain all of such Records until the Claim has been resolved.

§ 12.1.4 The Architect shall require all entities to whom it made payments for services provided under this Agreement to comply with the provisions of Section 12.1.1, 12.1.2 and 12.1.3 by insertion of the requirements contained in such sections in any written agreement between the Architect and such entity.

§ 12.1.5 The Owner and its accountants, auditors and agents shall be provided adequate and appropriate work space to conduct audits authorized by this Article 12, and the Owner and its accountants, auditors and agents agree to perform all of their work in the provided space and nowhere else in the Architect's offices, to not interact with the Architect's employees, and to not otherwise unreasonably interfere with or disrupt the work of the Architect's employees.

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

§ 12.2 Other special terms and conditions that modify this Agreement are as follows:  
See Section 12.2 of the B101 Project Attachment.

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents:

- .1 AIA Document B101-2017, Standard Form Agreement Between Owner and Architect as currently amended by the Owner (referred to as AIA Document B101-2017);
- .2 AIA Document A201-2017, General Conditions of the Contract for Construction as currently amended by the Owner (referred to as AIA Document A201-2017);

*(Paragraph deleted)*

- .3 B101 Project Attachment (referred to as the B101 Project Attachment); and

*(Paragraphs deleted)*

- .4 The terms and conditions contained in the Request for Proposal (RFP) for this Project, all addenda to the RFP, and the Architect's proposal.

APPROVED:

This Agreement shall be effective on date identified on page one of the B101 Project Attachment.

### OWNER

Signature and date are executed on the Project Attachment

### ARCHITECT

Signature and date are executed on the Project Attachment

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Printed name and title are identified on the Project Attachment

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Printed name and title are identified on the Project Attachment

**FORM AND EXECUTION**

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Signature and date are executed on the Project Attachment

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Printed name and title are identified on the Project Attachment



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