# Regular Business Meeting

Tuesday, March 12, 2024 5:30 PM
Board Assembly Room, 1250 West Broadway Avenue, Minneapolis, Minnesota 55411

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

2) **Adoption of the Agenda**

3) **Acceptance of Minutes**

3)a. February 13, 2024 Regular Business Meeting

4) **Recognitions**

5) **Recess**

6) **Public Comments**

7) **Recess**

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

8)a. Presentations and Updates

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

9)a. Approval of the Consent Agenda

9)a.1. Personnel Items

9)a.1.a. Approval of List A personnel matters (2024-3-ER-A)

9)a.1.b. Approval of List B personnel matters (2024-3-ER-B)

9)a.2. Contracts

9)a.2.a. Contract Alternative Amendments

9)a.2.b. Contract with Archer Mechanical (2024-14367)

9)a.2.c. Amendment to contract 2023-4400001933 with Bergan KDV

9)a.2.d. Contract with B&D Associates, LLC (2024-14396)

9)a.2.e. Contract with Bituminous Roadways Inc (2024-14363)

9)a.2.f. Contract with Central Roofing (2024-14385)

9)a.2.g. Amendment to contract 2023-44400002018 with CESO LLC

9)a.2.h. Contract with Construction Results Corp (2024-14361)

9)a.2.i. Contract with Ford Metro, Inc (2024-14399)

9)a.2.j. Contract with Grazzini Brothers & Company (2024-14395)

9)a.2.k. Contract with Greiner Construction, Inc (2024-14388)
9)a.2.l. Contract with Greiner Construction, Inc (2024-14389)
9)a.2.m. Contract with Horizon Equipment LLC (2024-14380)
9)a.2.n. Contract with H2I Group (2024-14386)

9)a.2.o. Contract with Kellington Construction, Inc (2024-14398)
9)a.2.p. Amendment to contract 2024-14401 with Lawal Scott Erickson Architects (LSE)
9)a.2.q. Contract with NAC Mechanical & Electrical (2024-14387)
9)a.2.r. Contract with Painting by Nakasone (2024-14379)
9)a.2.s. Contract with Red Cedar Steel Erectors, Inc (2024-14397)
9)a.2.t. Amendment to contract 2024-14392 with Rochon Construction
9)a.2.u. Contract with Schwab Vollhaber Lubratt Inc (2024-14365)
9)a.2.v. Contract with Sonus Interiors, Inc (2024-14381)
9)a.2.w. Contract with St Paul Linoleum & Carpet (2024-14374)
9)a.2.x. Contract with Summit Fire Protection (2024-14394)
9)a.2.y. Contract with Thelen Heating and Roofing (2024-14400)
9)a.2.z. Contract with Valley Apple Ford Inc (2024-14359)
9)a.2.aa. Contract with Warshaw Group, DBA Intellis Labs (2024-14384)
9)a.2.bb. Contract amendments with contract alternative schools for the 2023-2024 school year
9)a.3. Authorizations

9)a.3.a. Authorizing Minnesota State High School League (MSHSL) cooperative school sponsorship actions
9)a.4. Appointments

9)a.4.a. 2024 Neighborhood Revitalization Program Policy Board representative
9)b. Revision of Policy 5391: Graduation Requirements (2024-0016)
9)c. Revision Policy 5690: Student Data (2024-0017)

9)d. Resolution amending the 2024-2025 school calendar (2024-0018)
10) **New Business**

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

12) **Adjournment**

**OFFICIAL MINUTES**
**MINNEAPOLIS BOARD OF EDUCATION (SPECIAL SCHOOL DISTRICT NO. 1)**

**REGULAR BUSINESS MEETING**
**February 13, 2024**

## CALL TO ORDER

In accordance with applicable requirements, notice was provided to each member of the Board of Education and to the public not less than three days prior to the meeting. Board members met in a regular meeting in the assembly room at the John B. Davis Educational Services Center (1250 West Broadway Ave. Minneapolis, MN) on February 13, 2024.

Chair Collin Beachy called the meeting to order at 5:30 p.m., a quorum being present.

## ROLL CALL

Present: Directors Abdul Abdi, Sharon El-Amin, Faheema Feerayarre, Adriana Cerrillo, Lori Norvell, Ira Jourdain, Collin Beachy, Kim Ellison, Joyner Emerick (9); Ex Officio members Superintendent Dr. Lisa Sayles-Adams, Student Representative Rounds, Student Representative Peralta (3)

Absent: (0)

## APPROVAL OF AGENDA

Ellison moved to approve the agenda.

On a voice vote, the motion to approve the agenda was adopted with the following result:

Aye: Abdi, El-Amin, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick (9)
Nay: (0)
Abstain: (0)
Absent: (0)

## ACCEPTANCE OF MINUTES

Norvell moved to approve the minutes from the January 2, 2024 and January 9, 2024 meetings.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, El-Amin, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick (9)
Nay: (0)

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Abstain: (0)
Absent: (0)

## INTRODUCTIONS

Elliston Rounds and Leo Peralta were introduced as the 2024 Student Board Representatives.

Dr. Lisa Sayles-Adams was introduced as Superintendent.

## PUBLIC COMMENTS

Comments were heard from members of the public.

## RECESS

A ten-minute recess was taken.

## REPORTS AND RECOMMENDATIONS FROM THE SUPERINTENDENT OF SCHOOLS

Superintendent Dr. Sayles Adams and staff provided presentations on the following topics:

- 100 Day Entry Plan
- Budget Update

No votes or action was taken on these informational items.

## POLICY COMMITTEE REPORT

Policy Committee Chair Norvell provided the committee's report, which included a first reading Revision of Policy 5391: Graduation Requirements (2024-0016)

## ACTION ITEMS BY THE BOARD OF EDUCATION

### Approval of the Consent Agenda

Abdi moved to approve the consent agenda, which included the following items:

- Approval of List A personnel matters (2024-2-ER-A)
- Approval of List B personnel matters (2024-2-ER-B)
- Contract with Beaudry Oil and Service Inc (2024-14353)
- Contract with Education First Explore America (2024-4400002110)
- Contract with Education First Explore America (2024-4400002111)
- Amendment to 2024-4400001422 with iFixYouri
- Contract with Origins Program (2024-1000231675)
- Amendment to contract 2024-14339 with Pope Architects
- Contract with Porject Success (2024-4400002113)



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- Contract with School Speciality (2024-4400002077)
- Amendment to Contract 2024-14356 with Sheehy Construction
- Contract with SHI (2024-4400002106)
- Contract with WhyMaker (2024-1000231483)
- Authorizing the subdivision of the property at 2310 N 16th Ave, Minneapolis MN 55411 (former Willard and Gordon Schools)
- Authorizing an Environmental Covenant and Easement at the Adult Education North Campus (800 W. Broadway)
- Authorizing a temporary and permanent easement with Hennepin County at Riverbend School
- Authorizing Minnesota State High School League (MSHSL) cooperative school sponsorship actions

On a voice vote, the motion to approve the consent agenda was adopted with the following result (applied to all consent agenda items):

Aye: Abdi, El-Amin, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick (9)
Nay: (0)
Abstain: (0)
Absent: (0)

## REPORTS FROM BOARD OF EDUCATION DIRECTORS

The following directors and student representatives provided reports:

- Jourdain
- Norvell
- Abdi
- El-Amin
- Cerrillo
- Beachy

## ADJOURNMENT

Without objection, Chair Beachy adjourned the meeting at 7:55 p.m.

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**Secretary Notations:**

- Minutes submitted by Ryan Strack, Assistant to the Superintendent and Board
- Meeting materials: https://meetings.boardbook.org/Public/Agenda/1807?meeting=619540
- Minutes approved: DATE

**Attachments:** *(added upon approval of minutes)*

**Approvals:**

_____

Collin Beachy, Chair

_____

Lori Norvell, Clerk

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# Superintendent's Report

## Regular Business Meeting

March 12, 2024

MINNEAPOLIS PUBLIC SCHOOLS

# Superintendent Update

## Superintendent Dr. Lisa Sayles-Adams



MINNEAPOLIS PUBLIC SCHOOLS

# 2024-2025 Budget Development Process Update

Senior Officer Ibrahima Diop

# Budget Process Update

- Presented overview of proposed budget to the finance committee last week
- We will continue the process through finance committee and ultimately bring it here to full School Board
- Want to provide a brief update on status and timeline here tonight

# Budget Development Process Review

1. The **budget team determines revenue estimates** so we know how much money is available
2. The **budget team estimates average salary and benefits costs** to use for calculating those expenses
3. **School budget modeling determines the amounts allocated directly to schools**
4. **Department leaders build proposed budgets**, including any obligations the district has, such as for debt service etc.
5. If the sum of the schools and department allocations is greater than the available revenue, reductions and/or additional revenue sources must be identified, as a **balanced budget is required by State law**

# FY25 Budget Considerations

MINNEAPOLIS PUBLIC SCHOOLS

# Where we're at currently

| Loss of funds | Multiple factors | Budget gap | Employee Contracts |
|---|---|---|---|
| Many school districts in the state and across the country are facing a budget shortfall from current year, primarily due to loss of federal COVID-19 relief funding expiring. | Several factors happening at once are impacting the budget including our **annual budget season and negotiations with seven bargaining groups**. | As of 3/1/2024, we are **facing a minimum $110 million budget gap** (this figure includes current salary offers made to employee bargaining groups) | This gap does not take into account all contract settlements with our collective bargaining groups. **Budgets may need to be reopened as contracts are settled**. |

# How we got here

- **We've had ESSER (Federal COVID-19) funding for the last few years in order to respond to the pandemic** and those funds will not be available next year (total of $259 million)
- Despite decreases in student enrollment over the past ten years, **proportionate changes in the operational structure of our district have not been made**
- **Recent historic new state education funding has helped** immensely, but it's not enough to both makeup for decades of underfunding *and* to cover increased costs of running MPS
- **The cost of nearly all expenses have increased**--salaries, benefits, utilities, transportation, food, and contracted services

# Proposed FY25 Budget Overview

- The proposed FY25 budget includes significant expense reductions in both central office departments and schools
- However, increases in the cost of expenses offset much of these reductions
- This again underscores the fact that trying to sustain and resource the number of schools we have makes it difficult to balance the budget given current revenue levels
- Therefore, we propose to utilize a significant amount of assigned fund balance in the FY25 budget as a bridge until we can increase revenue (tech levy increase of $20 million) and transform the district to be operationally and fiscally sustainable
- Because the use of fund balance is a one-time bridge, changes must be made to be in effect for the 2025-26 school year/budget

# FY25 Budget Next Steps

**March 26**
Budget recommendations presented to the full School Board.

Further processing can happen on 3/19, 3/26 and 4/30

**April–June**
Interview & Select

**May 14**
First reading of the budget

**June**
Final approval of the budget at the board meeting

| Additional steps | |
|---|---|
| Settle contracts with our collective bargaining groups and adjust the budget accordingly | Additional cost of settled contracts will require additional reductions and/or unassigned fund balance use, which may impact the districts credit ratings and consequently the amount we pay to borrow |

# Looking to the Future (beyond FY25)

| INCREASE & TRANSFORM | | | |
|---|---|---|---|
| Increase revenue through voter approval of tech levy increase | Increase student enrollment | Continue to advocate for increased state and federal education funding | Make adjustments to how we are operating in order to have more resources to meet the goals in our strategic plan. |

# Achievement and Integration Funds Update

Executive Director Derek Francis

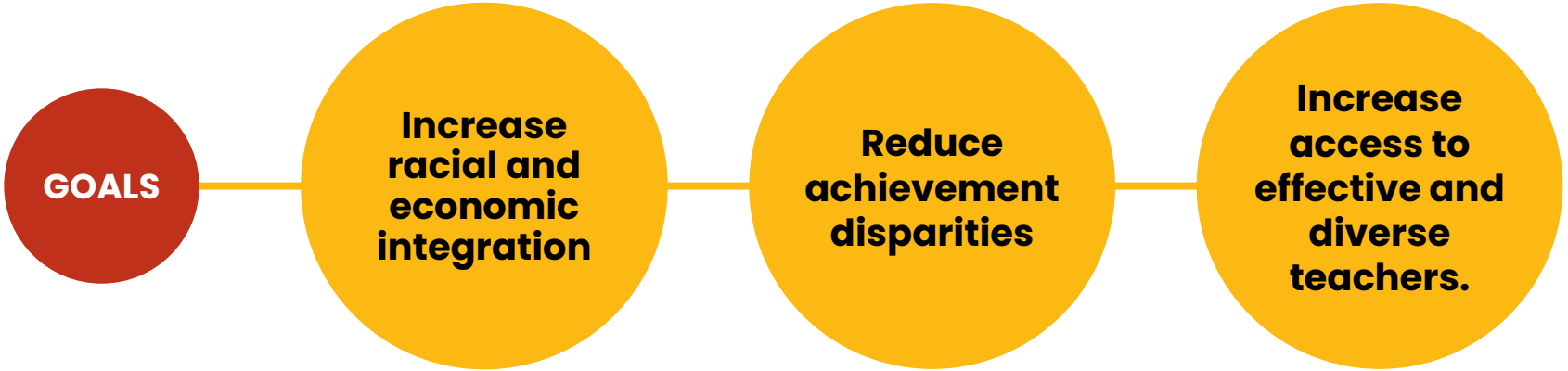
# Achievement and Integration Overview

- Any changes to the Achievement and Integration (A&I) budget must be submitted to the state by March 15 each year, so this update is being provided now on this funding source specifically
- In alignment with the overall proposed FY25 budget, we are making a few adjustments to the A&I budget
- The following slides provide background on A&I and the plan for modifications

# Achievement and Integration Overview

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

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






MINNEAPOLIS PUBLIC SCHOOLS

# Funding Requirements

**ALLOWABLE FUNDING USES**

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

# Funding Requirements

## UNALLOWABLE FUNDING USES

Ongoing technology costs

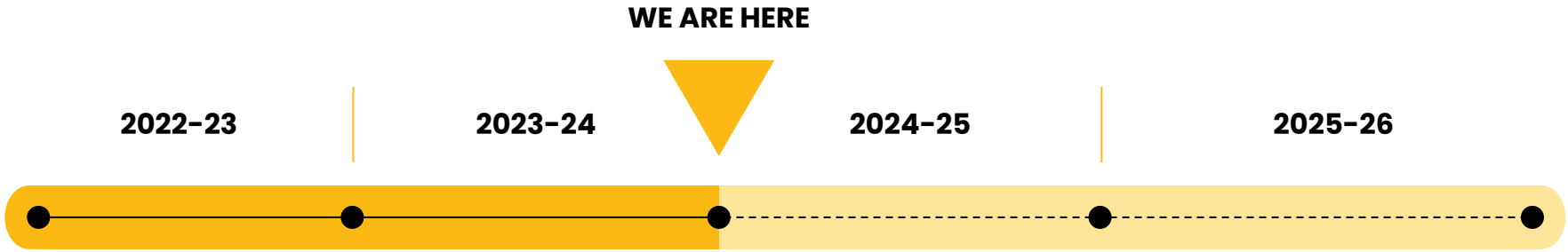
Staffing that MPS is already obligated to provide.

English Learner, Special Education, American Indian Education, Programs already funded in another way



MINNEAPOLIS PUBLIC SCHOOLS

# Plan Development Timeline




| Plan Development Year | Year 1 of 2023-2026 A & I Plan | Year 2 of 2023-2026 A & I Plan | Year 3 and Comprehensive Needs Assessment |
|---|---|---|---|
| Achievement and Integration Plan developed based on Comprehensive Needs Assessment | Funding adjustments can be made in support of the plan goals | Funding adjustments can be made in support of the plan goals | Evaluation of programs and needs assessment conducted to develop next plan |



MINNEAPOLIS PUBLIC SCHOOLS

# 2024-2025 A&I Allocation

## Plan funding from MDE: $12,440,900.16

| GOAL 1 | GOAL 2 | GOAL 3 | GOAL 4 | GOAL 5 | GOAL 6 |
|---|---|---|---|---|---|
| Magnet Schools | Reducing disparities in academic achievement | College and Career Readiness CTE/Higher ED | Student Equity & Voice | Equity and Climate - System Support, Change & Practices | Racially Identifiable Schools (RIS) |



Many of these allocations will directly support schools even if they are not in the school allocations.

# Next School Year Adjustments

**District Goal #1:** Magnet Schools: Moving to Centralized positions to continue the magnet theme development and include Anti-Racist/SEL Logic Model Training

**District Goal #2:** Reducing disparities in academic achievement: Prioritize K-8 RIS sites support: Increase teacher and ESP training opportunities in literacy, math and equity

**District Goal #3:** College and Career Readiness: Adding CTE exposure for ALL K-8, college/career mentorship including summer

**District Goal #4:** Student Equity and Voice: No change

**District Goal #5:** Equity and Climate: System Support, Change & Practices: No change

**District Goal #6:** Racially Identifiable Schools (RIS): Schools choose 1 FTE based on area of need. (Core Teacher, Family Engagement, Language Development)

# Questions?

# Minneapolis Public Schools

## List A: All Employees: Tuesday, March 12, 2024

## Hiring - Licensed

| | | | |
|---|---|---|---|
| Kyna Bate Boyle | Transition Plus | Teacher, Work Experience Coordinator | 2/28/2024 |
| James Horace | Henry High | Teacher, Special Education | 2/16/2024 |
| Laura Johnson | Lyndale Elementary | Teacher, Social Worker | 2/21/2024 |
| Christopher Leon | Anwatin Middle | Teacher, Special Education | 1/2/2024 |
| Kimberly Lichtenberger | Sullivan PK-8 | Teacher, Building Reserve | 2/20/2024 |
| Sueann Maclachlan | Anthony Middle | Teacher, Special Education | 2/20/2024 |
| Patricia Mcdougall | Olson Middle | Teacher, Interventionist (Math) | 2/15/2024 |
| Pearl Joy Mendoza | Franklin Middle | Teacher, Science | 2/26/2024 |
| Andrea Merims | Sullivan PK-8 | Teacher, Social Worker | 2/20/2024 |
| Sharina Mudd | Northeast Middle | Teacher, Special Education | 4/22/2024 |
| Jacob Olson | Southwest High | Teacher, Art | 3/4/2024 |
| Kristin Powell | Transition Plus | Teacher, English Second Language | 2/20/2024 |
| Emily Vavoulis | Windom Elementary | Teacher, Elementary | 7/1/2023 |
| Lucia Vique Dominguez | Emerson Elementary | Teacher, B/B (Spanish) Elementary | 2/20/2024 |
| Ahmed Warsame | Anwatin Middle | Teacher, Special Education | 8/13/2023 |
| Barry Wolff | Olson Middle | Teacher, TOSA Administrative | 2/27/2024 |

## Hiring - Non Licensed

| | | | |
|---|---|---|---|
| Ahmed Abdi | Anwatin Middle | Associate Educator (Interventionist) | 2/12/2024 |
| Adam Aded | Transportation, Regular Ed Transp. | School Bus Driver In Training | 2/20/2024 |
| Leobardo Aguila | Washburn High | Associate Educator | 2/7/2024 |
| Mahad Ahmed | Sullivan PK-8 | Associate Educator (Interventionist) | 2/21/2024 |

## Minneapolis Public Schools

## List A: All Employees: Tuesday, March 12, 2024

# Hiring - Non Licensed

| | | | |
|---|---|---|---|
| Mariam Ali | Webster Elementary | Special Education Assistant | 2/8/2024 |
| Farhiyo Aliawil | Transportation, Regular Ed Transp. | Bus Aide | 2/27/2024 |
| Herbert Bailey | Jenny Lind Elementary | Security Monitor | 2/21/2024 |
| Michael Betts | Engineers, Zone 1 | Custodian | 2/26/2024 |
| Bobby Boudreaux | Engineers, Zone 1 | Custodian | 2/12/2024 |
| Darius Brown | AVID Tutors | AVID Assistant | 2/5/2024 |
| Bella Brownlee | Minneapolis Kids | Child Care Assistant | 2/20/2024 |
| Marvin Bryant | Webster Elementary | Associate Educator | 2/12/2024 |
| Bruno Cantellano | South High | Associate Educator | 2/21/2024 |
| Keith Clark | Engineers, Zone 1 | Custodian | 2/27/2024 |
| Jeremiah Culverson | Engineers, Zone 2 | Custodian | 2/28/2024 |
| Alynia Davenport | Minneapolis Kids | Child Care Assistant | 2/26/2024 |
| Eli Dechamps | Engineers, Zone 2 | Custodian | 2/26/2024 |
| Angelina Dimitrov | Pratt Elementary | Associate Educator | 2/14/2024 |
| Francesca Dipiazza | Washburn High | Special Education Assistant | 2/26/2024 |
| Tiffany Dunn | Folwell Elementary | School Administrative Manager | 2/26/2024 |
| Gabriela Everett | Cityview Elementary | Associate Educator (Interventionist) | 2/1/2024 |
| Seraj Farabi-Iverson | IT Field Support Group 2 | IT Field Support Technician | 2/5/2024 |
| Khadeega Gazey | Field Elementary | Special Education Assistant | 3/5/2024 |
| Antenisha Griggs | Health Services | Licensed Practical Nurse | 4/8/2024 |
| Ashanti Hall | Minneapolis Academy & Career Center | Security Monitor | 3/5/2024 |

# Minneapolis Public Schools

## List A: All Employees: Tuesday, March 12, 2024

## Hiring - Non Licensed

| | | | |
|---|---|---|---|
| Tia Hannes | Minneapolis Kids | Child Care Assistant | 3/6/2024 |
| Nimo Hassan | Adult Basic Education | Associate Educator | 2/27/2024 |
| Safia Hassan | Transportation, Regular Ed Transp. | School Bus Driver In Training | 2/26/2024 |
| Jessalyn Hennekam | CWS, Site Group 4 - Central East | School Cook | 2/26/2024 |
| Madeleine Hezel | AVID Tutors | AVID Assistant | 3/5/2024 |
| Keevin Hinton | Engineers, Zone 2 | Custodian | 3/4/2024 |
| Jennifer Horan | Armatage Elementary | Health Services Assistant | 2/14/2024 |
| Elizabeth Howard | Andersen Middle | Special Education Assistant | 11/13/2023 |
| Samsam Hussein | Bancroft Elementary | Special Education Assistant | 2/12/2024 |
| Andrea Iniguez | Green Central Elementary | Associate Educator (Interventionist) | 2/28/2024 |
| Racquel Johnson | Field Elementary | Special Education Assistant | 2/26/2024 |
| Jeanne Kaplan | Northrop Elementary | Associate Educator | 2/9/2024 |
| Michael Landers | Henry High | School Athletic Director | 3/4/2024 |
| Andrew Lock | Transportation, Regular Ed Transp. | School Bus Driver In Training | 2/20/2024 |
| Tanayah Lollie | Pillsbury Elementary | Special Education Assistant | 2/12/2024 |
| Jennifer March | Minneapolis Kids | Child Care Assistant | 2/21/2024 |
| Oscar Menjivar | Andersen Middle | Special Education Assistant | 12/4/2023 |
| Allen Mickey | South High | Program Coordinator | 2/6/2024 |
| Marlina Miles | Roosevelt High | Special Education Assistant | 3/5/2024 |
| Precious Montgomery | Marcy Elementary | Special Education Assistant | 3/6/2024 |
| Tracy Moore | Engineers, Zone 2 | Custodian | 2/26/2024 |

# Minneapolis Public Schools

## List A: All Employees: Tuesday, March 12, 2024

## Hiring - Non Licensed

| | | | |
|---|---|---|---|
| Daniel Nichols | CWS, Production | CWS Production Assistant | 3/4/2024 |
| Firas Othman | IT Field Support Group 2 | IT Field Support Technician | 2/12/2024 |
| Katrina Powell | CWS, Production | CWS Production Assistant | 2/27/2024 |
| Jasiah Puckett | River Bend Education Center | Special Education Assistant | 2/20/2024 |
| Jesus Quevedo Zuniga | Sanford Middle | Special Education Assistant | 2/22/2024 |
| Caroline Reyes | Career and Technical Education | Associate Educator | 3/5/2024 |
| Avery Reyes Beattie | AVID Tutors | AVID Assistant | 2/13/2024 |
| Jada Richardson | South High | Associate Educator (Interventionist) | 2/26/2024 |
| Cairon Rigney Feinen | Minneapolis Kids | Child Care Assistant | 3/7/2024 |
| Deontez Ross | Engineers, Zone 2 | Custodian | 2/12/2024 |
| Teresa Saldivar Penaloza | CWS, Site Group 3 - Central West | Food Service Assistant | 2/26/2024 |
| Pablo Sande | Kenny Elementary | Special Education Assistant | 3/4/2024 |
| Natalie Schuller-Hary | Bancroft Elementary | Special Education Assistant | 2/20/2024 |
| Cala Scott | Henry High | Special Education Assistant | 2/14/2024 |
| Kali Shell Track | Loring Elementary | Special Education Assistant | 10/3/2023 |
| Bashir Shire | Transportation, Regular Ed Transp. | School Bus Driver In Training | 2/20/2024 |
| Mutsumi Siddall | Armatage Elementary | Special Education Assistant | 2/21/2024 |
| Lee Simmons | MPS Online 6-12 | Associate Educator (Interventionist) | 2/20/2024 |
| Robert Smith | River Bend Education Center | Special Education Assistant | 2/13/2024 |
| Tanaisha Smith | Loring Elementary | Special Education Assistant | 11/13/2023 |
| Bremiah Snyder | Henry High | Special Education Assistant | 2/5/2024 |

## Minneapolis Public Schools

## List A: All Employees: Tuesday, March 12, 2024

# Hiring - Non Licensed

| | | | |
|---|---|---|---|
| Darren Spinks | CWS, Site Group 2 - Northeast | School Cook | 2/12/2024 |
| Matthew Steinbergs | Andersen Middle | Special Education Assistant | 2/21/2024 |
| Aja Stewart | Henry High | Special Education Assistant | 2/28/2024 |
| Sofija Stojmenovic | Minneapolis Kids | Child Care Assistant | 2/7/2024 |
| Munawara Tesso | Loring Elementary | Special Education Assistant | 8/31/2023 |
| Natalie Umolac | AVID Tutors | AVID Assistant | 2/5/2024 |
| Daejah Vongphachanh | Minneapolis Kids | Child Care Assistant | 3/5/2024 |
| Herbert Ware | River Bend Education Center | Special Education Assistant | 2/3/2024 |
| Makya Watkins | SEA Cadre | Special Education Assistant | 2/21/2024 |
| Karrisa Williamson | Hmong International Academy Elementary | Associate Educator | 2/21/2024 |
| Olando Wilson | Engineers, Zone 2 | Custodian | 2/26/2024 |
| Charles Young | Franklin Middle | Security Monitor | 2/12/2024 |
| Dominique Young | CWS, Site Group 5 - Southwest | School Cook | 3/4/2024 |

## Discharges

### Licensed

### Non-Licensed

| | | |
|---|---|---|
| Food Service Assistant | 02-23-2024 | 2024-03-ER-6261 |
| School Bus Driver | 02-23-2024 | 2024-03-ER-6252 |
| Custodian | 03-07-2024 | 2024-03-ER-6298 |

## Probationary Separations

### Licensed

### Licensed, Staff Reduction

### Licensed, Discontinuance of Contract

| | | |
|---|---|---|
| Teacher | 03-04-2024 | 2024-03-ER-6289 |
| Teacher | 03-11-2024 | 2024-03-ER-6309 |

### Non-Licensed

| | | |
|---|---|---|
| Special Education Assistant | 02-16-2024 | 2024-03-ER-6245 |
| Associate Educator (Interventionist) | 02-20-2024 | 2024-03-ER-6248 |
| Specialist | 02-15-2024 | 2024-03-ER-6246 |
| Associate Educator (Interventionist) | 02-22-2024 | 2024-03-ER-6266 |
| Special Education Assistant | 02-23-2024 | 2024-03-ER-6257 |
| Associate Educator | 03-07-2024 | 2024-03-ER-6301 |
| Special Education Assistant | 03-11-2024 | 2024-03-ER-6326 |
| Special Education Assistant | 03-07-2024 | 2024-03-ER-6300 |
| Associate Educator | 02-23-2024 | 2024-03-ER-6197 |
| Program Coordinator | 03-11-2024 | 2024-03-ER-6327 |

### Non-Licensed, Staff Reduction

## Layoffs

### Licensed

### Non-Licensed

## Administrative Contract Non-Renewals

MINNEAPOLIS
PUBLIC SCHOOLS
Urban Education. Global Citizens.

# Contract for Goods/Supplies/Materials
# and/or
# Labor/Installation

This Contract is entered into between Special School District No. 1, "District", a special school district created and existing under the laws of Minnesota, and Archer Mechanical "Contractor" (collectively "parties") to purchase burners and install oil pumps for 7 Minneapolis Public Schools to Plant Maintenance.

## *1 TERM OF CONTRACT*

1.1 This Contract is effective on 2/26/24 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 12/31/24, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District's Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor's OWN RISK and as a volunteer.

## 2 SCOPE OF WORK

2.1 Contractor shall perform all of the services related to Labor and Installation set forth herein and any exhibits attached hereto as Exhibit A ("Scope of Work"). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

## 3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor

under this Contract shall be paid by District as described below.

***3.1 Total Obligation.***

District's total obligation to Contractor/Archer Mechanical under this Contract, including compensation for goods and/or services, including reimbursable expenses (if applicable), shall not exceed $1,020,791. Contractor/Archer Mechanical shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

***3.2 Frequency of Invoicing and Terms of Payment.***

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable Exhibit B. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

***3.3 Taxes.***

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

## 4. INSPECTION OF GOODS & REJECTION

4.1 Buyer is entitled to inspect the Goods upon delivery. If the Goods are unacceptable for any reason, Buyer must reject them at the time of delivery up to ten (10) business days from the date of delivery. If Buyer has not rejected the Goods within ten (10) business days from the date of delivery, Buyer shall have waived any right to reject that specific delivery of Goods.

4.2 In the event Buyer rejects the Goods, Buyer shall allow Seller a reasonable time to cure the deficiency. A reasonable time period shall be determined by industry standards for the Goods, as well as the Seller and Buyer.

## 5 RISK OF LOSS

5.1 Risk of loss will be on the Seller until the time when the Buyer accepts delivery. Seller shall maintain any and all necessary insurance in order to insure the Goods against loss at Seller's own expense.

## 6 TITLE

6.1 Title to the Goods will remain with the Seller until Buyer accepts delivery.

## 7 FORCE MAJEURE

7.1 Non-delivery or default of this Agreement due to labor disputes, transportation shortage, delay or shortage of materials to produce the Goods, fires, accidents, Acts of God, or any other causes outside of Seller's control shall be notified to Buyer immediately upon realization that it will not be able to deliver the Goods as promised. Either Party may terminate this Agreement upon such notice.

## 8 MATERIALS AND LABOR

Contractor shall provide and pay for all labor and equipment, including tools, construction equipment, machinery, transportation and all other facilities and services, and all materials necessary for the completion of the Work. All materials shall be good quality and new, unless the Contract Documents require or permit otherwise. Contractor may substitute materials only with the prior written approval of the District. (Check all that apply)

☐ The following materials will not be included in the Contract Price and are the sole responsibility of the District and will not be covered under warranty by Contractor:

_____ or attach annexure.

☐ In addition, the Contract Price shall include the following fixtures:

_____ or attach annexure.

## 9 LICENSES AND PERMITS

(Check one) ☒ Contractor ☐ District shall obtain all licenses and permits necessary for proper

completion of the Work. (Check one) ☒ Contractor ☐ District is responsible for the cost of any necessary permits or licenses.

## 10 LAWS AND REGULATIONS

Contractor shall perform the Work in a workmanlike manner and in compliance with all applicable federal, state, and local laws, regulations and ordinances, trade standards, ethical guidelines and any safety requirements of District (the "Applicable Laws"). Contractor shall promptly notify District upon discovery of any variance between the Applicable Laws and the Construction Documents.

## 11 SUPERVISION OF CONSTRUCTION

Contractor shall be solely responsible for and shall supervise and direct all construction under this Agreement. Contractor shall provide competent and suitable personnel to perform the Work and shall at all times maintain good discipline and order at the Property. Contractor will at all times take all reasonable precautions for the safety of its employees and the public at the Property. Contractor agrees to assume full responsibility for the acts, negligence, and/or omissions of its employees and any subcontractors and their employees.

## 12 RECORD DOCUMENTS

Contractor shall maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, and the like in good order and annotated to show all changes made during construction, which will be delivered to District upon completion of the Work. District shall have the right to inspect and review such documents upon notice to Contractor.

## 13 UTILITIES

(Check one) ☐ Contractor ☒ District shall pay for all permanent electric, water, phone, cable, sewer and gas service as needed to perform the Work. (Check one) ☐ Contractor ☒ District shall pay for the installation, connection and removal of all temporary utilities on the Property during the performance of the Work. All temporary utilities shall conform and adhere to the Applicable Laws.

## 14 HAZARDOUS MATERIALS

Except as otherwise provided in the Contract Documents, Contractor shall be responsible for all Hazardous Materials brought to the Property by Contractor. Hazardous Materials shall include radioactive materials, asbestos, polychlorinated biphenyls, petroleum products, crude oil, flammable materials, chemicals or solvents known to cause cancer or reproductive toxicity, pollutants, contaminants and toxic substances which are restricted, prohibited or regulated by any agency of government in its manufacture, use, maintenance, storage, Ownership or handling. If Contractor discovers any Hazardous Materials on the Property, Contractor shall immediately notify District and may cease working until the material or substance has been rendered harmless. District shall defend, indemnify and hold harmless Contractor, any subcontractors, and their respective agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from contact with the Hazardous Substance in performance of the Work

resulting in bodily injury, illness or death, or injury or property damage, provided such claim, damage, loss or expense is not the result of any negligent act or omission by the party seeking such indemnity.

## 15 CONDITION OF THE PROPERTY

Contractor agrees to keep the Property and adjoining driveways free and clear of waste material and rubbish. Contractor shall confine the storage of materials and equipment and the operations of employees to the Property, and shall not unreasonably encumber the Property with materials or equipment. Contractor shall be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the Property clean and ready for occupancy by District.

## 16 INSPECTION

District shall have a right to inspect the Work at any time and request that Contractor promptly correct any Work that is defective or does not conform to the Contract Documents. If required, the Work shall be inspected and certified by the appropriate state or local agency or health officer at each necessary stage.

## 17 SUBCONTRACTS

Contractor shall furnish to District a list of names of subcontractors proposed to perform principal portions of the Work. Contractor shall not employ any subcontractor to whom District reasonably objects. A subcontractor, for the purposes of this Agreement, shall be a person with whom Contractor has a direct contract for work at the Property. All contracts between Contractor and subcontractor shall be in accordance with the terms of this Agreement and the Contract Documents.

## 18 WORK CHANGES

District reserves the right to order changes to the Work in the nature of additions, deletions or modifications, without invalidating this Agreement, and agrees to make corresponding adjustments in the Contract Price and time of termination if applicable. All changes will be authorized in a written "Change Order" signed by District and Contractor, which shall be incorporated by reference herein.

## 19 OTHER CONTRACTORS

District reserves the right to enter into other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work shall not be impeded and shall give them access to the Property as necessary to perform their contracts.

## 20 EXTENSIONS OF TIME

The times stated in this Agreement may be extended for such reasonable time as Contractor may determine when performance of the Work by Contractor is delayed by a Change Order, labor disputes,

fire, unusual delay in deliveries, abnormal adverse weather conditions, unavoidable casualties, or other causes beyond Contractor's control or which justify the delay.

## 21 INDUSTRY LANGUAGE

The language used for terms of this Agreement, unless otherwise defined, shall be construed according to the customary meaning within the construction industry in the area where the Project is located and for the type of Work being performed.

## 22 CONFIDENTIALITY (Check one)

☐ As a result of Contractor's participation in the Work, Contractor will have access and contribute to information and materials of a highly sensitive nature, including Confidential Information. Contractor hereby warrants that Contractor and its employees and agents shall not (without in each instance obtaining the District's prior written consent) disclose, make commercial or other use of, or give or sell to any person, firm, or corporation, any Confidential Information received directly or indirectly from District or acquired or developed in the course of the performance of this Agreement unless: (1) required to do so pursuant to Applicable Laws (and then only after Contractor has given District prompt written notice of the legal compulsion and, at District's expense, provided by District with cooperation in any attempt District may make to gain a protective order acceptable to District); or (2) it is rightfully in the possession of Contractor from a source other than District prior to the time of disclosure of the information to Contractor under this Contract; or (3) it was in the public domain prior to the time of Contractor's receipt; or (4) it became part of the public domain prior to the time of Contractor's receipt by any means other than an authorized act or omission on the part of Contractor; or (5) it is supplied to Contractor after the time of Contractor's receipt by a third party who was not under any obligation to District to maintain such information in confidence; or (6) it was independently developed by Contractor prior to the time of its receipt from District. All Confidential Information, regardless of form, shall be the property of District and shall be returned to District upon its request, or in any event, at the completion or earlier termination of this Agreement.

☒ Contractor will NOT have access and contribute to Confidential Information.

## 23 GENERAL TERMS AND CONDITIONS

a. The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

## 24 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

a. The District is committed to the policy that all persons shall have equal access to its

programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for

training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

## 25 BACKGROUND CHECKS

a. Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C.Section 5119a and 42 U.S.C. Section 14501-05.
b. Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

## 26 DATA PRIVACY

a. Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

## 27 USE OF DISTRICT NAME OR LOGO

a. Contractor 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 District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

## 28 INDEPENDENT CONTRACTOR

a. Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

b. Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

## 29 WORKER HEALTH, SAFETY AND TRAINING

a. Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

## 30 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

a. Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

## 31 INSURANCE

a. At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above $1,000,000 per occurrence through umbrella or excess coverage. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards.

b. Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

c. Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

d. Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract, and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

e. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION ($1,000,000) for any one occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services or work under this Contract.

f. Contractor shall procure and maintain and shall cause any Subcontractor of the

Contractor to procure and maintain, the minimum insurance coverage listed herein. Such coverage shall be procured and maintained with forms and insurers acceptable to the Company/Client. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

g. A Certificate of Insurance shall be completed by the Contractor's Insurance Agent(s) as evidence that policies providing the required coverage, condition, and minimum limits are in full force and effect and shall be subject to review and approval by the Company/Client prior to commencement of any services under this Contract. The Certificate shall identify this Contract and shall provide that the coverage afforded under the policies shall not be cancelled, terminated, or materially changed until at least thirty (30) days prior written notice has been given to the Company/Client. The Certificate shall name Company/Client, its officers, and its employees as additional insured with respect to the General Liability Insurance.

h. Failure on the part of the Contractor or Subcontractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material Breach of Contract upon which the Company/Client may immediately terminate this Contract, or at its discretion, the Company/Client may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Company/Client shall be repaid by Contractor to the Company/Client upon demand, or Company/Client may offset the cost of the premium against any monies due to Contractor from the Company/Client.

i. Company/Client reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Contractor agrees to execute any and all documents necessary to allow the Company/Client access to any and all insurance and endorsements pertaining to this particular job.

j. Every policy required above shall be primary insurance, and any insurance carried by the Company/Client, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor. The Contractor shall be solely responsible for any deductible losses under the policies required above.

k. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Contract by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration or types.

l. As an independent contractor the Contractor is not entitled to Worker's Compensation benefits under the Company/Client plan. Furthermore, the Contractor is obligated to pay federal and state income tax on any monies' earned pursuant to this contractual relationship.

m. The parties hereto understand and agree that the Company/Client, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitation or any other rights, immunities, and protections provided by state and federal laws.

## 32 INDEMNIFICATION

a. Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

## 33 LIMITATION ON LIABILTY

a. In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

## 34 CONFLICT OF INTEREST/CODE OF ETHICS

a. Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

## 35 COMPLIANCE WITH LAWS AND DEBARMENT

a. Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes

debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

## 36 TERMINATION

a. The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

b. District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

c. Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contactor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

## 37 RETURN OF DATA

a. Within ten (10) days of the completion, termination of this Contract, or upon request of the District, whichever occurs first; Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Or, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

b. Within fifteen (15) days of the completion or earlier termination of this Contract,

or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

## 38 RECORDS MANAGEMENT AND MAINTENANCE

a. District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

## 39 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

**Special School District No. 1**

Attn: Plant Maintenance
Name: Grant Lindberg
Title: Manager
Email:
Grant.Lindberg@mpls.k12.mn.us
1225 N 7th Street
Minneapolis, MN 55411

**Vendor**

Name: Archer Mechanical

Attn: Shane Joyce

Address: 1614 Cliff Rd E, Burnsville MN 55076

Email: ShaneJoyce@ArcherMechanical.com

**40 ACKNOWLEDGMENT**

a. In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

b. Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

**41 NON-WAIVER**

a. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

**42 ASSIGNMENT**

a. Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

**43 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT**

a. This Contract shall be construed under Minnesota law (without regard for choice

of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

## 44 WARRANTY

a. Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

b. Contractor warrants that the Work shall be in accordance with the Contract Documents, applicable law and trade standards and free from material structural defects, improper workmanship or defective materials. Contractor shall replace, correct, or repair any Work not in accordance with the Contract Documents, applicable law and trade standards or any defects caused by faulty materials, equipment or workmanship for a period of 1 year(s) from the date of completion of the Work. Nothing in this Section 15 shall be construed to place a time limit with respect to any other obligation Contractor may have under this Agreement.

## 45 SEVERABILITY

a. If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

**46 SURVIVABILITY**

a. The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

**SPECIAL SCHOOL DISTRICT NO. 1**

By: _____

Name: _____

(Printed)

Title: _____

Date: _____

**CONTRACTOR NAME**

By: Shane Joyce

Name: Shane Joyce

(Printed)

Title: President

Date: 2/

## EXHIBIT A: SCOPE OF WORK

### Description of Services:

**Purchase oil pumps and burners for the below schools:**

**Marcy 2 burner controls $131,272**

**Edison 3 burners $299,720**

**Sheridan 2 burners $210,110**

**Nutrition Center 2 burners $199,269**

**Keewaydin 2 oil pumps $60,903**

**Pratt 2 oil pumps $62,808**

**Sanford 2 oil pumps $56,709**

### Service Outcome:

**New burners and oil pumps install**

### Method of Evaluation:

**Timely delivery and quality materials**

**EXHIBIT B: PAYMENT TERMS**

If there are exhibits to describe the payment terms:

The payment terms are as follows:

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

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Bergan KDV dated 7/1/2023 ("Contract") is made and entered into by and between Special School District No.1 ("District") and Bergan KDV ("Contractor") (collectively "parties').

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and Bergan KDV ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 6/30/2024 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001933

1. *Original contract amount:* $95,000
2. *Accumulative contract amount:* $128,975

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

**Section:** District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed $128,975. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description:** Audit services for FY23.

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

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name: Ibrahima Diop

Title: Senior Finance & Operations Officer

Date: _____

**BerganKDV:**

Signature: _____

Name: Andrew Grice

Title: Director

Date: 2/27/2024

# FY21 North High School Phase 3

## Contract Sum: $249,700

## Contractor: B&D Associates, LLC

## Project Name and Number

North High School Phase 3 Work Scope 3A Concrete and Masonry
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $249,700 | accepted |
| **Alt #1: Toilets D140 & D240** | $52,700 | rejected |
| **Alt #2: Toilets D106 & D206** | $68,100 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $26,100 | rejected |
| **Alt #4: Auditorium Seating** | $0 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

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

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

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

B&D Associates, LLC
1410 Sylvan Street, Suite 200
St Paul, MN 55117

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

North High School Phase 3 Work Scope 03A Concrete and Masonry
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

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

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

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

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

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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**User Notes:** (1984652397)

TABLE OF ARTICLES

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9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK

## ARTICLE 1 THE CONTRACT DOCUMENTS

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

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

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

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

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

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

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

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

**§ 3.3 Substantial Completion of the Project or Portions Thereof**

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

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

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 3.4.3 If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

## ARTICLE 4 CONTRACT SUM

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

**§ 4.2 Stipulated Sum**

§ 4.2.1 The Contract Sum shall be two-hundred, forty-nine thousand, seven hundred dollars ($ 249,700 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**

§ 4.2.2.1 Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
§ 4.2.2.2 Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
§ 4.2.3 Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

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

*(Table deleted)*


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

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 4.4 Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 4.5 Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

§ 4.6 Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

§ 5.1.3 When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of

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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

.1 That portion of the Contract Sum properly allocable to completed Work;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

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

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

.5 Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

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

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the

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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**

**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and

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

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

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

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

## ARTICLE 6 DISPUTE RESOLUTION

**§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.

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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

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

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

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

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

Tim Selken
Project Manager
B&D Associates, LLC
1410 Sylvan Street, Suite 200
St Paul, MN 55117

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

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

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§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 8.8 Other provisions:

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

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

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

.2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

.3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

.5 Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

.6 Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All Specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

.7 Addenda, if any:


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| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

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

.8 Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

.9 Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Contractors Bid Documents

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

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | Tim Selken V.P. |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*
## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:11:01 CT on 01/30/2024.

**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 January

...

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

...

B&D Associates, LLC
1410 Sylvan Street, Suite 200
St Paul, MN 55117

...

North High School Phase 3 Work Scope 03A Concrete and Masonry
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

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

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§ 1.2 In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

§ 1.3 Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.



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

...

Defined in EXH-D Project Schedule

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

~~Portion of Work~~ ~~Substantial Completion Date~~

~~§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete~~
~~§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

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

~~[ ] By the following date:~~

~~§ 3.4.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~Portion of Work~~ ~~Date to be substantially complete~~

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ ] Stipulated Sum, in accordance with Section 4.2 below~~

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[ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

[ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

§ 4.2.1 The Contract Sum shall be two-hundred, forty-nine thousand, seven hundred dollars ($ 249,700 ), subject to additions and deductions as provided in the Contract Documents.

...

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

| Item | Price |
|---|---|

§ 4.2.2.2 Subject to the conditions noted below, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

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

...

§ 4.2.4 Unit prices, if any:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)any are defined in EXH-B Project Charter.

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

§ 4.3 Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum PriceAllowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
§ 4.3.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.3.2 The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 4.3.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

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§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed percent ( %) of the standard rental rate paid at the place of the Project.

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

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum PriceUnit prices, if any, are defined in EXH-B Project Charter.
§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.4.2 The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed percent ( %) of the standard rental rate paid at the place of the Project.

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

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

§ 4.4.7 Guaranteed Maximum Price
§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 4.4.7.2 Alternates
§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

| Item | Price |
|---|---|

§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:
*(Identify each allowance.)*

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~



Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

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

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

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

§ 5.1.4.3 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ 5.1.5.3 In accordance with AIA Document A232-2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~§ 5.1.5.3.1 The amount of each progress payment shall first include:~~

- ~~.1 The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~.2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~.3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~§ 5.1.5.3.2 The amount of each progress payment shall then be reduced by:~~

- ~~.1 The aggregate of any amounts previously paid by the Owner;~~
- ~~.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Retainage withheld pursuant to Section 5.1.7.~~

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§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.5.6 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.5.7 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 5.1.6.2.1 The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6.2.2 The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 5.1.6.2.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.1.6.4 In accordance with AIA Document A232-2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.4.1 The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.6.5 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.6.7 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.6.8 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).
**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

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

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

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.
§ 6.1.1 Mediation
The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.



[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

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

...

~~§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price~~
~~§ 7.2.1 Termination~~
~~§ 7.2.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~§ 7.2.1.2 Termination by the Owner for Cause~~
~~§ 7.2.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~.1 Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~.2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 Subtract the aggregate of previous payments made by the Owner; and~~
- ~~.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~§ 7.2.1.2.2 When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~§ 7.2.1.2.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~§ 7.2.1.3 Termination by the Owner for Convenience~~
~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~
~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Tim Selken
Project Manager
B&D Associates, LLC
1410 Sylvan Street, Suite 200
St Paul, MN 55117

...

**§ 8.5 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

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

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

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All Specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**PAGE 10**

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

...

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

~~*[ ] AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work*~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

Contractors Bid Documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:11:01 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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MINNEAPOLIS PUBLIC SCHOOLS

# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 3A Concrete & Masonry

This work scope includes all concrete and masonry work for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $249,700

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $52,700 | Rejected |
| **Alt#2: Toilets D106 & D206** | $68,100 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $26,100 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

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

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

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

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

   c. Automobile Insurance

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

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

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

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

2. CONSULTANT'S OBLIGATIONS

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

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

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE

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

5. GENERALLY

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

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

i. Per Claim $2,000,000

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

e. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

f. Property Insurance

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

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

g. Builders "all risk" Insurance

i. Per Claim $2,000,000

ii. Aggregate $4,000,000

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

h. Umbrella Liability

i. Aggregate limit $5,000,000

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

MINNEAPOLIS PUBLIC SCHOOLS

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 3A Concrete & Masonry

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School: September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

## Substantial Completion

The Work will be substantially complete on the dates provided above.

# FY24 Site Work – Multiple Sites

## Contract Sum: $1,056,397.50

## Contractor: Bituminous Roadways, Inc.

## Project Name and Number

FY24 Site Work – Multiple Sites

- Armatage Elementary School
- Barton Elementary School
- Dowling Elementary School
- Folwell Elementary School
- Kenwood Elementary School
- Keewaydin Elementary
- Lucy Laney Elementary
- Maintenance & Operations Building
- Roosevelt High School
- Whittier Elementary School

Minneapolis Public Schools Project Number 24MULTI002
Official Publication Number 24-2411

## Description

Site work includes bituminous, concrete, curb & gutter, erosion control, sidewalks, crack filling, sealcoating, fog-sealing, and landscaping per plans and specifications dated 1/12/24 as prepared by Bolton & Menk.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid: M&O Building, Keewaydin, Dowling** | $446,590.00 | Accepted |
| **Alt #1: Armatage Montessori** | $ 36,697.50 | Accepted |
| **Alt #2: Barton** | $ 83,130.00 | Accepted |
| **Alt #3: Folwell** | $118,760.00 | Accepted |
| **Alt #4: Kenwood** | $ 79,530.00 | Accepted |
| **Alt #5: Lucy Laney** | $ 74,890.00 | Accepted |
| **Alt #6: Roosevelt** | $152,970.00 | Accepted |
| **Alt #7: Whittier** | $ 63,830.00 | Accepted |
| **Total Contract Amount** | **$1,056,397.50** | |

## Contract Documents

AIA Document A101-2017
AIA Document A101 Exhibit A-2017
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule

# AIA® Document A101® – 2017

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

**AGREEMENT** made as of the 7th day of February in the year 2024
*(In words, indicate day, month and year.)*

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

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

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

Bituminous Roadways, Inc.
1520 Commerce Dr
Mendota Heights, MN 55120

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

FY24 Site Work – Multiple Sites
Armatage Elementary School
Barton Elementary School
Dowling Elementary School
Folwell Elementary School
Kenwood Elementary School
Keewaydin Elementary
Minneapolis Public Schools Project Number 24MULTI002
Official Publication Number 24-2411

Lucy Laney Elem
Maintenance &
Operations Building
Roosevelt H.S.
Whittier Elem

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

Bolton & Menk
7575 Golden Valley Road, Suite 200
Minneapolis, MN 55427

The Owner and Contractor agree as follows.

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

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

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

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**TABLE OF ARTICLES**


**1 THE CONTRACT DOCUMENTS**

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**3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

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**5 PAYMENTS**

**6 DISPUTE RESOLUTION**

**7 TERMINATION OR SUSPENSION**

**8 MISCELLANEOUS PROVISIONS**

**9 ENUMERATION OF CONTRACT DOCUMENTS**

**EXHIBIT A INSURANCE AND BONDS**


## ARTICLE 1 THE CONTRACT DOCUMENTS

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

## ARTICLE 2 THE WORK OF THIS CONTRACT

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

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

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

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

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

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

### § 3.3 Substantial Completion

**§ 3.3.1** The Contractor shall achieve Substantial Completion of the entire Work:
*(Check one of the following boxes and complete the necessary information.)*



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

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

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

*(Table Deleted)*

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

## ARTICLE 4 CONTRACT SUM

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

### § 4.2 Alternates

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

*(Table Deleted)*

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

*(Paragraph Deleted)*

*(Table Deleted)*

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

*(Paragraph Deleted)*

*(Table Deleted)*

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

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.5** Liquidated damages


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*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*
damages for delay (but not as penalty), Contractor shall pay Owner $1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the
Owner.

*(Paragraph Deleted)*

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

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

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

*(Paragraph Deleted)*

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

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

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

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

.1 That portion of the Contract Sum properly allocable to completed Work;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

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


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.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and

.5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

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

*(Paragraph Deleted)*

5% (five percent)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

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

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*
determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

*(Paragraph Deleted)*

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

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

**§ 5.2 Final Payment**

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

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


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

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

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

*(Paragraph Deleted)*

**§ 5.4 Prompt Payment to Subcontractors**

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

## ARTICLE 6 DISPUTE RESOLUTION

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

**§ 6.1.1 Mediation**

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

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

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

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

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


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[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[ X ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

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

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

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

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

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Ann Cerney, CPCM Project Manager, Minneapolis Public Schools
1250 West Broadway Avenue
Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:
*(Name, address, email address, and other information)*

Ethan Lang
Bituminous Roadways, Inc.
1520 Commerce Dr
Mendota Heights, MN 55120

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

Init.
/

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**§ 8.5 Insurance and Bonds**

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

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

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.7** Other provisions:

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

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

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2020

.5 Drawings

| Number | Title | Date |
|---|---|---|

.6 Specifications

| Section | Title | Date | Pages |
|---|---|---|---|

.7 Addenda, if any:

| Number | Date | Pages |
|---|---|---|

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

.8 Other Exhibits:

*(Paragraphs Deleted)*

EXH-B Project Charter


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*(Paragraph Deleted)*

EXH-C Owner Insurance
EXH-D Project Schedule

*(Paragraph Deleted)*

*(Table Deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

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

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

| | |
|---|---|
| **OWNER** *(Signature)* | Pam Hague<br>**CONTRACTOR** *(Signature)* |
| *(Printed name and title)* | Pam Hague, Secretary<br>*(Printed name and title)* |

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

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the 7th day of February in the year 2024

...

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

...

Bituminous Roadways, Inc.
1520 Commerce Dr
Mendota Heights, MN 55120

...

FY24 Site Work – Multiple Sites

...

Armatage Elementary School

...

Barton Elementary School

Minneapolis Public Schools Project Number 24MULTI002
Official Publication Number 24-2411

...

Bolton & Menk
7575 Golden Valley Road, Suite 200
Minneapolis, MN 55427

...

Dowling Elementary School

...

Folwell Elementary School

...

Kenwood Elementary School

...

Keewaydin Elementary

...

Lucy Laney Elem

...

Maintenance & Operations Building

...

Roosevelt H.S.

...

Whittier Elem

**PAGE 2**

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

...

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



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

...

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

...

~~Portion of Work~~ ~~Substantial Completion Date~~

...

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

...

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

...

~~Item~~ ~~Price~~

...

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

...

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

...

~~Item~~ ~~Price~~ ~~Conditions for Acceptance~~

...

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

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...

~~*(Identify each allowance.)*~~

...

~~Item~~ ~~Price~~

...

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

...

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

...

~~Item~~ ~~Units and Limitations~~ ~~Price per Unit ($0.00)~~

...

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

**PAGE 4**

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

...

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

...

Owner.

...

~~**§ 4.6** Other:~~

...

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

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...

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

...

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

...

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

...

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

**PAGE 5**

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

...

5% (five percent)

...

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

...

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

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...

~~§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

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

...

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

**PAGE 6**

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

...

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

...

Payment.

...

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

...

~~*(Insert rate*~~

...

**§ 5.4 Prompt Payment to Subcontractors**

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...

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of ~~interest agreed upon, if any.)~~payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

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

...

**§ 6.1.1 Mediation**

...

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

...

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

...

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

...

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

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**PAGE 7**

[ X ] Litigation in a court of competent jurisdiction

...

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

...

Ann Cerney, CPCM Project Manager, Minneapolis Public Schools
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Ethan Lang
Bituminous Roadways, Inc.
1520 Commerce Dr
Mendota Heights, MN 55120

**PAGE 8**

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

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

...

January 31, 2020

...

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

...

~~[ ] AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:~~

...

EXH-B Project Charter

**PAGE 9**

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

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...

EXH-C Owner Insurance

...

EXH-D Project Schedule

...

~~[ ] The Sustainability Plan:~~

...

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

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# AIA® Document A101® – 2017 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 7th day of February in the year 2024
*(In words, indicate day, month and year.)*

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

FY24 SITE WORK – MULTIPLE LOCATIONS

Armatage Elementary School
Barton Elementary School
Dowling Elementary School
Folwell Elementary School
Kenwood Elementary School
Keewaydin Elementary School
Lucy Laney Elementary School
Maintenance & Operations Building
Roosevelt High School
Whittier Elementary School

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

Minneapolis Public Schools, SSD#1
1250 W. Broadway Ave, Minneapolis, MN 55411

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

Bituminous Roadways, Inc. 1520 Commerce Dr
Mendota Heights, MN 55120

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


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

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

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

### ARTICLE A.1 GENERAL

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


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## ARTICLE A.2 OWNER'S INSURANCE

### § A.2.1 General

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

### § A.2.2 Liability Insurance

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

### § A.2.3 Required Property Insurance

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

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

| Causes of Loss | Sub-Limit |
|---|---|

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

| Coverage | Sub-Limit |
|---|---|

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

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

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


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**§ A.2.3.3 Insurance for Existing Structures**
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional


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interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

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

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

| Coverage | Limits |
|---|---|

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

**§ A.3.1 General**

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

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

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

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

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


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**§ A.3.2.2 Commercial General Liability**

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

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

.2 personal injury and advertising injury;

.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

.4 bodily injury or property damage arising out of completed operations; and

.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

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

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

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

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

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

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

*(Paragraph deleted)*

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

*(Paragraphs deleted)*


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

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

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

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1 as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

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

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | Full contract value |
| Performance Bond | Full contract value |

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

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

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

None


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**User Notes:** (1916104045)

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

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:17:32 CT on 02/07/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 7th day of February in the year 2024

...

FY24 SITE WORK – MULTIPLE LOCATIONS

Armatage Elementary School
Barton Elementary School
Dowling Elementary School
Folwell Elementary School
Kenwood Elementary School
Keewaydin Elementary School
Lucy Laney Elementary School
Maintenance & Operations Building
Roosevelt High School
Whittier Elementary School

...

Minneapolis Public Schools, SSD#1
1250 W. Broadway Ave, Minneapolis, MN 55411

...

Bituminous Roadways, Inc. 1520 Commerce Dr
Mendota Heights, MN 55120

**PAGE 5**

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

...

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

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

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

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

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

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

.

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

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

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

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

**PAGE 6**

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section ~~A.3.3.1.~~
~~*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*~~A.3.3.1 as defined in EXH-C Owner Insurance.

~~[ ] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:~~
~~*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party*~~

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~~*other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*~~

~~[ ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for Work within fifty (50) feet of railroad property.~~

~~[ ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.~~

~~[ ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.~~

~~[ ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.~~

~~[ ] **§ A.3.3.2.6 Other Insurance**~~
~~*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*~~

| ~~**Coverage**~~ | ~~**Limits**~~ |
|---|---|

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

...

| | |
|---|---|
| Payment Bond | Full contract value |
| Performance Bond | Full contract value |

...

None

# Exhibit B – Project Charter

## Project Name and Number

FY24 Site Work – Multiple Sites

Armatage Elementary School
Barton Elementary School
Dowling Elementary School
Folwell Elementary School
Kenwood Elementary School
Keewaydin Elementary
Lucy Laney Elementary
Maintenance & Operations Building
Roosevelt High School
Whittier Elementary School

Minneapolis Public Schools Project Number 24MULTI002
Official Publication Number 24-2411

## Description

Site work includes bituminous, concrete, curb & gutter, erosion control, sidewalks, crack filling, sealcoating, fog-sealing, and landscaping per plans and specifications dated 1/12/24 as prepared by Bolton & Menk.

## Contract Sum

The Contract Sum shall be $1,056,397.50

### Alternates

| Item | Price | Status |
|---|---|---|
| **Base Bid: M&O Building, Keewaydin, Dowling** | $446,590.00 | Accepted |
| **Alt #1: Armatage Montessori** | $ 36,697.50 | Accepted |
| **Alt #2: Barton** | $ 83,130.00 | Accepted |
| **Alt #3: Folwell** | $118,760.00 | Accepted |
| **Alt #4: Kenwood** | $ 79,530.00 | Accepted |
| **Alt #5: Lucy Laney** | $ 74,890.00 | Accepted |
| **Alt #6: Roosevelt** | $152,970.00 | Accepted |
| **Alt #7: Whittier** | $ 63,830.00 | Accepted |
| **Total Contract Amount** | **$1,056,397.50** | |

### Conditions

| Item | Price | Conditions for Acceptance |
|---|---|---|
| **None** | | |
| | | |

## Allowances

| Item | Price |
|---|---|
| **None** | |
| | |

## Unit Prices

| Item | Price per Unit |
|---|---|
| Bituminous Crack Seal | $ 4.00/LF |
| Medium Duty Bituminous Pavement Repair | $35.00/SY |
| Heavy Duty Bituminous Pavement Repair | $40.00/SY |
| Concrete Walk 4" | $60.00/SF |
| Small Block Retaining Wall | $80.00/SF |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

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

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

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

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

   c. Automobile Insurance

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

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

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

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

2. CONSULTANT'S OBLIGATIONS

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

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

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

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

5. GENERALLY

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

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

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

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

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

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

   i. Per Claim $2,000,000

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

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

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

g. Builders "all risk" Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

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

h. Umbrella Liability

   i. Aggregate limit $5,000,000

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

# Exhibit D – Project Schedule

## Project Name and Number

FY24 Site Work – Multiple Sites

- Armatage Elementary School
- Barton Elementary School
- Dowling Elementary School
- Folwell Elementary School
- Kenwood Elementary School
- Keewaydin Elementary
- Lucy Laney Elementary
- Maintenance & Operations Building
- Roosevelt High School
- Whittier Elementary School

Minneapolis Public Schools Project Number 24MULTI002
Official Publication Number 24-2411

## Description

Site work includes bituminous, concrete, curb & gutter, erosion control, sidewalks, crack filling, sealcoating, fog-sealing, and landscaping per plans and specifications dated 1/12/24 as prepared by Bolton & Menk.

## Schedule

| | |
|---|---|
| MPS Board Approval: | March 12, 2024 |
| Pre-Construction Meeting: | late March 2024 |
| M&O Parking lot demo | April 2024 (weather dependent) |
| Last day of school: | June 14, 2024 |
| Commence construction of Armatage, Barton, Dowling, Folwell, Kenwood, Keewaydin, Lucy Laney, Roosevelt, Whittier | June 17, 2024 |
| Last Day for Staff: | June 17, 2024 |
| Juneteenth Holiday: | June 19, 2024 (All MPS Buildings Closed) |
| Substantial Completion: | August 20, 2024 |
| MPS Staff back in Building: | August 21, 2024 |
| Final Completion: | August 30, 2024 |
| First day of School: | September 3, 2024 |
| Close-out Documents: | October 1, 2024 |
| 1-Year Warranty Review | August 2025 |

## Substantial Completion

The Work will be substantially complete on or before _August 20, 2024_.

# FY21 North High School Phase 3

## Contract Sum: $398,416

## Contractor: Central Roofing Company

## Project Name and Number

North High School Phase 3 Work Scope 7H Roofing
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $398,416 | accepted |
| **Alt #1: Toilets D140 & D240** | $0 | rejected |
| **Alt #2: Toilets D106 & D206** | $0 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $0 | rejected |
| **Alt #4: Auditorium Seating** | $0 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

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

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

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

Central Roofing Company
4550 Main Street NE
Minneapolis, MN 55421

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

North High School Phase 3 Work Scope 7H Roofing
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

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

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

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

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

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.


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**User Notes:** (893671016)

**TABLE OF ARTICLES**


1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK


## ARTICLE 1 THE CONTRACT DOCUMENTS

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

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

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

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.


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**User Notes:** (893671016)

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

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

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

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

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

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

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be three hundred, ninety-eight thousand, four hundred, sixteen dollars ($ 398,416 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

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

*(Table deleted)*


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

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

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

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

**.5** Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

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

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**
**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**
**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and
**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**
**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
**.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

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

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

**ARTICLE 6 DISPUTE RESOLUTION**
**§ 6.1 Initial Decision Maker**
The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

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

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

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


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

Jason Stock
CFO/Vice President
Central Roofing Company
4550 Main Steet NE
Minneapolis, MN 55421

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

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

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

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

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**.2** AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

**.3** AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | | |
|---|---|---|---|
| 2 | 11/21/2023 | 222 | |
| 3 | 11/30/2023 | 140 | |

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

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors complete bid documents

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

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | Jason Stark CFO/UP |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

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

...

Central Roofing Company
4550 Main Street NE
Minneapolis, MN 55421

...

North High School Phase 3 Work Scope 7H Roofing
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

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

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

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

...

Defined in EXH-D Project Schedule

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

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

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

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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~~[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

~~[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*~~
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be three hundred, ninety-eight thousand, four hundred, sixteen dollars ($ 398,416 ), subject to additions and deductions as provided in the Contract Documents.

...

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

| ~~Item~~ | ~~Price~~ |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

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

...

**§ 4.2.4** Unit prices, if ~~any:~~
~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~any are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

**§ 4.3** ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
~~**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~**§ 4.3.2** The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

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

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

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

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~~.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;~~

~~.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~

~~.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~

~~.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:~~

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

~~.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~

~~.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~

~~.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~

~~.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~

~~.6 Retainage withheld pursuant to Section 5.1.7.~~

~~**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

~~**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~

~~**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.~~

~~**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.~~

...

Five Percent (5%)

...

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

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

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

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

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

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

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

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

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Jason Stock
CFO/Vice President
Central Roofing Company
4550 Main Steet NE
Minneapolis, MN 55421

...

**§ 8.5** ~~Insurance and Bonds~~**Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

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

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

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

~~*[ – ] AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work*~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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**User Notes:** (893671016)

~~[ ~~ ~~]~~ ~~The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors complete bid documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:24:31 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____ day of ___January_____ in the year __2024____
*(In words, indicate day, month, and year.)*

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

North High School Phase 3 Work Scope 03A Concrete and Masonry
1500 James Avenue, Minneapolis, MN 55411

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

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

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

Central Roofing Company 4550 Main Street NE
Minneapolis, MN 55421

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ARTICLE A.1 GENERAL**

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

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

**§ A.2.1 General**

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

**§ A.2.2 Liability Insurance**

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

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

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

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions



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**§ A.2.3 Required Property Insurance**

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

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

| Causes of Loss | Sub-Limit |
|---|---|

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

| Coverage | Sub-Limit |
|---|---|

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

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

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

**§ A.2.3.3 Insurance for Existing Structures**

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


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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

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

| Coverage | Limits |
|---|---|

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

**§ A.3.1 General**

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

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

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

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

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

**§ A.3.2.2 Commercial General Liability**

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

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
**.2** personal injury and advertising injury;
**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
**.4** bodily injury or property damage arising out of completed operations; and


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**User Notes:** (1666338351)

**.5** the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

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

**.1** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

**.2** Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

**.3** Claims for bodily injury other than to employees of the insured.

**.4** Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

**.5** Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

**.6** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

**.7** Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

**.8** Claims related to roofing, if the Work involves roofing.

**.9** Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

**.10** Claims related to earth subsidence or movement, where the Work involves such hazards.

**.11** Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

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

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

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

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

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

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

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

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


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

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

*(Paragraphs deleted)*

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

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $398,416 |
| Performance Bond | $398,416 |

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

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

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

None


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:25:17 CT on 01/30/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____day of ___January_____in the year __2024____

...

North High School Phase 3 Work Scope 03A Concrete and Masonry
1500 James Avenue, Minneapolis, MN 55411

...

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

...

Central Roofing Company 4550 Main Street NE
Minneapolis, MN 55421

**PAGE 2**

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

**PAGE 4**

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

...

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

**PAGE 5**

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

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

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

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

**§ A.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

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

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

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

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

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

**§ A.3.3.2** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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

[ – ] **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

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

...

| | |
|---|---|
| Payment Bond | $398,416 |
| Performance Bond | $398,416 |

...

None

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# AIA® Document A232® – 2019

## *General Conditions of the Contract for Construction,* *Construction Manager as Adviser Edition*

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

North High School Phase 3 Work Scope 7H Roofing
1500 James Avenue, Minneapolis, MN 55411

**THE CONSTRUCTION MANAGER:**
*(Name, legal status, and address)*

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

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

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

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

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

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

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

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.


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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

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

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

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

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

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

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

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

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


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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

**§ 1.2 Correlation and Intent of the Contract Documents**

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

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

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

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

**§ 1.3 Capitalization**

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

**§ 1.4 Interpretation**

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

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

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

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

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

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

**§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to


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whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

**§ 1.7 Digital Data Use and Transmission**

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

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

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

## ARTICLE 2 OWNER

**§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

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

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

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

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

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court


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or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

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

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

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

**§ 2.3.3** The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.4** If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

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

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

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

**§ 2.3.8** The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

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

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

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants'


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additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

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

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

**§ 3.1.3** The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

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

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

**§ 3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

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

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.


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

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

**§ 3.2.4** If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.6** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

### § 3.3 Supervision and Construction Procedures

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

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

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

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

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


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

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

### § 3.4 Labor and Materials

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

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

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

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

**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

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

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

### § 3.5 Warranty

**§ 3.5.1** The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents


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and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

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

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

### § 3.6 Taxes

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

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

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

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

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

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager,


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determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

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

### § 3.8 Allowances

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

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

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

### § 3.9 Superintendent

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

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

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

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

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

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of


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commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

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

**§ 3.10.3** The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

### § 3.11 Documents and Samples at the Site

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

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

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

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

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

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

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review


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by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

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

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

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

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

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

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must


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satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

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

### § 3.13 Use of Site

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

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

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

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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


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Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

### § 3.18 Indemnification

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

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

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

## ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

### § 4.1 General

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

**§ 4.1.2** The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

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

### § 4.2 Administration of the Contract

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


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

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

**§ 4.2.3** The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

**§ 4.2.4** The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

**§ 4.2.5** The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

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

**§ 4.2.7** The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.


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**§ 4.2.9** Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

**§ 4.2.10** The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

**§ 4.2.11** The Architect will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.

**§ 4.2.12** Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.13** The Construction Manager will prepare Change Orders and Construction Change Directives.

**§ 4.2.14** The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.15** Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

**§ 4.2.16** The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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


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**§ 4.2.18** The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

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

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

*(Paragraph deleted)*

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

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

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

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

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written


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confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

**§ 5.3 Subcontractual Relations**

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

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 5.4 Contingent Assignment of Subcontracts**

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

**.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

**.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

**§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

**§ 6.1.3** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors


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shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

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

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

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

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

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

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or


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substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

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

**.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

**.2** For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

**.3** For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

**.4** For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

**.5** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

**.6** In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

**§ 7.2 Change Orders and Change Proposals**

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

**.1** The change in the Work;

**.2** The amount of the adjustment, if any, in the Contract Sum; and

**.3** The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without


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invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

**.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

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

**.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

**.4** As provided in Section 7.3.4.

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

**.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;

**.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);

**.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

**.5** Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on


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the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

### § 7.4 Minor Changes in the Work

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

## ARTICLE 8 TIME

### § 8.1 Definitions

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

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

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

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

### § 8.2 Progress and Completion

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

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

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

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

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.


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**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

**.1** Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

**.2** Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);

**.3** Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

**.4** Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

**.5** Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

**.1** Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

**.2** In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

**.3** Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

**.4** With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

**.5** Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the


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Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

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

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

### § 9.3 Applications for Payment

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

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


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**§ 9.3.1.2** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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

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

**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

> "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

**§ 9.4 Certificates for Payment**

**§ 9.4.1** Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.


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**§ 9.4.2** Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 9.4.2.1** Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

**§ 9.4.3** The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.6** The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of


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

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

**§ 9.5.4** If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

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

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

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

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


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

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect then the Contractor may, upon ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up which shall be accomplished as provided in Article 7.

### § 9.8 Substantial Completion

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

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.3** Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.


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

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

### § 9.9 Partial Occupancy or Use

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

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents


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and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

### § 9.11 Damages for Delay

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the


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Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

**§ 10.2 Safety of Persons and Property**

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

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- **.4** construction or operations by the Owner, Separate Contractors, or other Contractors.

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

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

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.


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**§ 10.3 Hazardous Materials**

**§ 10.3.1** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**.1** Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

**.2** The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

*(Paragraph deleted)*

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.


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**§ 10.4 Emergencies**

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

## ARTICLE 11 INSURANCE AND BONDS

**§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.


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**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors,


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Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Paragraph deleted)*

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

**§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.


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## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

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

**§ 12.1.2** If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby.

#### § 12.2.2 After Substantial Completion

*(Paragraphs deleted)*

**§ 12.2.2.1**If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

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

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.


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

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

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

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

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the


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Contractor shall give a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe procedures. The Owner shall bear such costs, except as provided in Section 13.4.3.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

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

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

**§ 13.5 Interest**

All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.


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Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

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

**.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

**.3** Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

**.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.1.5 No Right to Stop Work for Non-Payment

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10)


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days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

**.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

**.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

**.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

**.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

**.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

**.2** Accept assignment of subcontracts pursuant to Section 5.4; and

**.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

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

**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

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

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

**§ 14.4 Termination by the Owner for Convenience**

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

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

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

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

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

*(Paragraph deleted)*


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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

**§ 15.1.1 Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

**§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

**§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

**§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

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


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*(Paragraphs deleted)*

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

**§ 15.2.6** In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

*(Paragraphs deleted)*

**§ 15.3 Mediation**

**§ 15.3.1** Any claim, dispute or other matter in question or arising out of or related to the Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

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

*(Paragraphs deleted)*


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# *Additions and Deletions Report for*
## *AIA® Document A232® – 2019*

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**PAGE 1**

North High School Phase 3 Work Scope 7H Roofing
1500 James Avenue, Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

...

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

...

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

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

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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The ~~Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

...

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

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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

...

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

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

...

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

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

...

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

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or ~~authorization.~~ authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

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**§ 2.3.5** ~~The~~ If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~ Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.



**§ 3.1.3** The Contractor shall ~~not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.~~hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

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

...

**§ 3.2.1** ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally~~ The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors,

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inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, ~~and correlated personal observations with requirements of the Contract Documents.~~has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

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

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

**§ 3.2.2** ~~Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The ~~Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.~~Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

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**§ 3.2.4** If the Contractor believes that ~~additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.6** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

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

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

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

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

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

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

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**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

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

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

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

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

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

...

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

...

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume ~~appropriate~~ full responsibility for such Work and shall bear the ~~costs attributable~~

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~~to correction.~~attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ~~14~~ ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

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

...

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

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

...

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

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**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

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~~The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

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

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**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

...

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and ~~approved by the Architect.~~accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

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

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

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**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such

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facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

...

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

...

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

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

...

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

...

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's ~~representatives during construction until the date the Architect issues the final Certificate for Payment.~~ consultants (1) during construction; (2) until final payment is due; and (3) with the

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Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract ~~Documents.~~Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

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

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

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

...

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

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**§ 4.2.11** The Architect ~~will~~ will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness~~ or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.

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**§ 4.2.18** The Architect will interpret and decide matters concerning performance ~~under, and~~ under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness.~~ with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** ~~Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.~~Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

~~**§ 4.2.21** The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

...

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

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

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

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~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

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

**§ 6.2.3** ~~The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or~~

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~~defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.~~Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

...

**§ 6.2.5** ~~The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.~~Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

...

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

...

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. ~~An order for a minor change in the Work may be issued by the Architect alone.~~

...

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

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

**.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

**.2** For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

**.3** For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

**.4** For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

**.5** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

**.6** In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

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**§ 7.2 Change Orders and Change Proposals**

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

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**.3** The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

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

...

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others;~~others (at rates approved by the Owner);

...

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

...

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

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

...

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

...

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

...

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

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

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

**.1** Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

**.2** Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets

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back on schedule as established by the CPM Schedule Report (including any updates thereto);

.3 Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

.4 Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

.5 Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

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**§ 8.3.1** If the Contractor is delayed at any time in the ~~commencement or~~ progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5)~~ or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

.1 Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

.2 In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

.3 Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

.4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

.5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

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**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be~~ Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. ~~This~~ The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment ~~prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required,~~ for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and ~~suppliers, and shall reflect retainage if provided for in the Contract Documents.~~material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

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**§ 9.3.1.2** ~~Applications for Payment~~ Such applications shall not include requests for payment ~~for portions of the Work for which the~~ of amounts the Contractor does not intend to pay a Subcontractor ~~or supplier,~~ or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

"That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

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**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

...

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

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If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect ~~or awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven~~ ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and ~~start-up, plus interest as provided for in the Contract Documents.~~start-up which shall be accomplished as provided in Article 7.

...

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

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**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or ~~corrected prior to final payment.~~ corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

...

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special

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warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6), if required by the Owner,~~ including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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**§ 9.11 Damages for Delay**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

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~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.~~**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

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If either party suffers injury or ~~damage~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ ten (10) days after ~~discovery.~~ first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.

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**§ 10.3.1** ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify~~ In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless,

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the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect ~~of the condition.~~in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**.1** Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

**.2** The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** ~~Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

**§ 10.3.4** ~~The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

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Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

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

...

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

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Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~** ~~Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

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**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

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**~~§ 11.3.2~~** ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

**...**

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**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall ~~deposit the insurance proceeds in a separate account and~~ make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

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The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary ~~thereby, shall be at the Contractor's expense.~~thereby.

...

~~**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.~~

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

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

**§ 12.2.2.1** If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.4** ~~The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.~~ If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.5** ~~Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.~~ The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

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

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**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public ~~authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice~~ authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for~~ observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely~~ a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for such procedures. Such~~ observe procedures. The Owner shall bear such costs, except as provided in Section ~~13.4.3, shall be at the Owner's expense.~~13.4.3.

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~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the

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Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

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**§ 14.1.5 No Right to Stop Work for Non-Payment**

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

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**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

...

~~**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

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**§ 15.1.1 Definition.** A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms ~~of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out~~ of ~~or relating to~~ the Contract. The responsibility to substantiate Claims shall rest with ~~the party making the Claim.~~ the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

...

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**§ 15.1.3.1** Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the ~~other party~~ Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party~~ the Contractor under this Section 15.1.3.1 shall be initiated within ~~21~~ ten (10) days after occurrence of the event giving rise to such Claim or within ~~21~~ ten (10) days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for ~~an~~ any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

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~~**§ 15.1.7 Waiver of Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

...

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

~~**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation~~

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~~within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

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

**~~§ 15.2.8~~** ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy~~ Any claim, dispute or other matter in question or arising out of or related to the ~~Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** The parties shall ~~endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**~~§ 15.3.3~~** ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

**~~§ 15.3.4~~** ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

**~~§ 15.4 Arbitration~~**

**~~§ 15.4.1~~** ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

**~~§ 15.4.1.1~~** ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

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~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:26:01 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A232™ – 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# AIA® Document E203® – 2013

## *Building Information Modeling and Digital Data Exhibit*

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
*(Name and location or address of the Project)*

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

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

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

**TABLE OF ARTICLES**


1 GENERAL PROVISIONS

2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

3 DIGITAL DATA PROTOCOLS

4 BUILDING INFORMATION MODELING PROTOCOLS

5 OTHER TERMS AND CONDITIONS


### ARTICLE 1 GENERAL PROVISIONS

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

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project,.

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

**§ 1.3 Adjustments to the Agreement**

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



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

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:
*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

**§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

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

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

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

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

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

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

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

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

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

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

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

**ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**

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


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Data established pursuant to the terms of this Exhibit.

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

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

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

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

## ARTICLE 3 DIGITAL DATA PROTOCOLS

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

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

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

MPS Central files are the digital project files kept on the MPS server

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

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


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*(Paragraph deleted)*
§ .

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

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

**§ 3.4 Unauthorized Use**

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

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

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

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

**§ 3.5 Digital Data Management**

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

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

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

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

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.
*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

| Responsible Project Participant | Project Milestone |
|---|---|
| Contractor | Project Construction begins |

## ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

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


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

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

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

| Project Portion for Modeling | Responsible Project Participant |
|---|---|
| Project design | Architect |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.
*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

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

**§ 4.5.1** The Modeling protocols shall address the following:

**.1** Identification of the Model Element Authors;
**.2** Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
**.3** Identification of the required LOD of each Model Element at each identified Project milestone;
**.4** Identification of the construction classification systems to be used on the Project;
**.5** The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
**.6** The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
**.7** Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
**.8** Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
**.9** Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

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

None


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*(Paragraph deleted)*
§ .

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

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

**§ 4.7 Unauthorized Use**

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

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

**§ 4.7.2 Following Establishment of Modeling Protocols**

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

**§ 4.8 Model Management**

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

| Responsible Project Participant | Project Milestone |
|---|---|

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

- **.1** Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
- **.2** Model file storage location(s)
- **.3** Processes for transferring and accessing Model files
- **.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.
- **.5** Processes for aggregating Model files from varying software platforms
- **.6** Model access rights
- **.7** Identification of design coordination and clash detection procedures.
- **.8** Model security requirements
- **.9** Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

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

- **.1** Collect incoming Models:
  - **.1** Coordinate submission and exchange of Models
  - **.2** Create and maintain a log of Models received


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.3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
.4 Maintain a record copy of each Model file received

.2 Aggregate Model files and make them available for Authorized Uses
.3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
.4 Manage Model access rights
.5 Other: *(Identify additional responsibilities.)*

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

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

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

Transmit to MPS the model in PDF, Revit and AutoCAD

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

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

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

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

**ARTICLE 5 OTHER TERMS AND CONDITIONS**

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

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.


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# *Additions and Deletions Report for*

## *AIA® Document E203® – 2013*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:27:09 CT on 01/30/2024.

**PAGE 1**

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

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

...

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

**PAGE 2**

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

...

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~3.

**PAGE 3**

| | | |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |

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| | | |
|---|---|---|
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

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

**§** .

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

...

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

...

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

...

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

...

Contractor Project Construction begins

**PAGE 5**

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

...

Project design Architect

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

Participants.

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Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

...

None

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

**§** .

**PAGE 6**

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

...

**.1** Model origin point, coordinate system, precision, file formats and ~~units~~units. The model shall be accurately geo-located to agreed-upon reference datum

...

**.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**PAGE 7**

Transmit to MPS the model in PDF, Revit and AutoCAD

...

| | | | | |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |

...

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

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As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:27:09 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 7H Roofing

This work scope includes all roofing work for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium, childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $398,416.

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $0 | Rejected |
| **Alt#2: Toilets D106 & D206** | $0 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $0 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

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

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

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

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

   c. Automobile Insurance

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

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

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

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

2. CONSULTANT'S OBLIGATIONS

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

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

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

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

5. GENERALLY

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

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

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

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

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

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

   i. Per Claim $2,000,000

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

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

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

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

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

h. Umbrella Liability

   i. Aggregate limit $5,000,000

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

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 7H Roofing

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School:  September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on the dates provided above.

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND**
**The Center for Effective School Operations**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and CESO, LLC dated 3/12/2024 ("Contract") is made and entered into by and between Special School District No.1 ("District") and CESO, LLC ("Contractor") (collectively "parties').

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and CESO, LLC ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 9/13/2023 through 12/11/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400002018

1. *Original contract amount:* 99,000.00
2. *Accumulative contract amount:* $249,395.00

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

**Section** 3.1: The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as follows. District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses, shall not exceed $249,395.00 Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description Section** 1.1:
- To provide multi-tiered levels of support with focus on effective, efficient operational practices and technical support to proactively position the district's onsite human resources team to engage with current and future district employees.
- Ongoing Executive Director support will be provided through consultation, support, thought, and strategy partnership to the Executive Director of Human Resources.
- The contract will be extended until June 30th, 2024.

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

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name: Alicia Miller

Title: Senior Officer of HR

Date: _____

**CESO LLC:**

Signature: Laura Eiden

Name: Laura Eiden

Title: Vice President of CESO HR, Operations

Date: 3/4/24

DocuSign Envelope ID: 342B845D-56C0-4D3B-B197-C3A6126F2D61

# FY24 Longfellow Fire Sprinkler Upgrade

## Contract Sum: $690,000.00

## Contractor: Construction Results Corporation

## Project Name and Number

Longfellow Fire Sprinkler Upgrade
3017 E. 31st St.
Minneapolis, MN 55406
Minneapolis Public Schools Project Number 24LONG001
OP 24-2409

## Description

Replace and upgrade the fire sprinkler wet and dry systems at Longfellow High School per the project bid documents prepared by KFI Engineers.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $690,000 | accepted |

## Contract Documents

AIA Document A101-2017
AIA Document A101 Exhibit A-2017
Exhibit B – Project Charter
Exhibit C – Project Schedule
AIA Document E203-2013
AIA Document A201-2017

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# AIA® Document A101® – 2017

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

**AGREEMENT** made as of the Twenty-sixth day of January in the year Two Thousand Twenty-four
*(In words, indicate day, month and year.)*

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

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

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

Construction Results Corporation
5465 Highway 169 North
Plymouth, MN 55442

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

Longfellow Fire Sprinkler Upgrade
3017 E. 31st St
Minneapolis, MN 55406

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

KFI Engineers
670 County Road B West
St. Paul, MN 55113

The Owner and Contractor agree as follows.

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

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

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

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**TABLE OF ARTICLES**

**1 THE CONTRACT DOCUMENTS**

**2 THE WORK OF THIS CONTRACT**

**3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**4 CONTRACT SUM**

**5 PAYMENTS**

**6 DISPUTE RESOLUTION**

**7 TERMINATION OR SUSPENSION**

**8 MISCELLANEOUS PROVISIONS**

**9 ENUMERATION OF CONTRACT DOCUMENTS**

**EXHIBIT A INSURANCE AND BONDS**

**ARTICLE 1 THE CONTRACT DOCUMENTS**

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

**ARTICLE 2 THE WORK OF THIS CONTRACT**

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

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

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

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

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

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

**§ 3.3 Substantial Completion**

**§ 3.3.1** The Contractor shall achieve Substantial Completion of the entire Work:
*(Check one of the following boxes and complete the necessary information.)*


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

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

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

*(Table Deleted)*

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

## ARTICLE 4 CONTRACT SUM

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

### § 4.2 Alternates

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

*(Table Deleted)*

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

*(Paragraph Deleted)*

*(Table Deleted)*

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

*(Table Deleted)*

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

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.5** Liquidated damages
*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays,*


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*expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*
damages for delay (but not as penalty), Contractor shall pay Owner $1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the
Owner.

*(Paragraph Deleted)*

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

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

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

*(Paragraph Deleted)*

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

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

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

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

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

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

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


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.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and

.5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

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

*(Paragraph Deleted)*

5% (five percent)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

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

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*
determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

*(Paragraph Deleted)*

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

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

**§ 5.2 Final Payment**

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

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


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

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

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

**§ 5.4 Prompt Payment to Subcontractors**

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

**ARTICLE 6 DISPUTE RESOLUTION**
**§ 6.1 Initial Decision Maker**
The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017.

**§ 6.1.1 Mediation**

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

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

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

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

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

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017


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[ X ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

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

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

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

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

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Don Bielinski
1250 West Broadway Avenue
Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:
*(Name, address, email address, and other information)*

Mike Luurtsema
President
Construction Results Corporation
5465 Highway 169 North
Plymouth, MN 55442
Mike.Luurtsema@ConstructionResults.com

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


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**§ 8.5 Insurance and Bonds**

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

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

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.7** Other provisions:

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

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

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

**.2** AIA Document A101™–2017, Exhibit A, Insurance and Bonds

**.3** AIA Document A201™–2017, General Conditions of the Contract for Construction

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2020

**.5** Drawings

| Number | Title | Date |
|---|---|---|

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|

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

**.8** Other Exhibits:

*(Paragraphs Deleted)*

EXH-B Project Charter


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*(Paragraph Deleted)*

EXH-C Owner Insurance
EXH-D Project Schedule

*(Paragraph Deleted)*

*(Table Deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

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

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

| | |
|---|---|
| | DocuSigned by: 8BF28F28F05B43C... |
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| | Mike Luurtsema President |
| *(Printed name and title)* | *(Printed name and title)* |


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

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:44:48 CT on 01/26/2024.

**PAGE 1**

**AGREEMENT** made as of the Twenty-sixth day of January in the year Two Thousand Twenty-four

...

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

...

Construction Results Corporation
5465 Highway 169 North
Plymouth, MN 55442

...

Longfellow Fire Sprinkler Upgrade
3017 E. 31st St
Minneapolis, MN 55406

...

KFI Engineers
670 County Road B West
St. Paul, MN 55113

**PAGE 2**

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

...

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

**PAGE 3**

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

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...

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

...

| ~~Portion of Work~~ | ~~Substantial Completion Date~~ |
|---|---|

...

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

...

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

...

| ~~Item~~ | ~~Price~~ |
|---|---|

...

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

...

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

...

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

...

**§ 4.3** Allowances, if any, included in the Contract ~~Sum:~~

...

~~*(Identify each allowance.)*~~*Sum are defined in EXH-B Project Charter.*

...

| ~~Item~~ | ~~Price~~ |
|---|---|

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...

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

...

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

...

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

...

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

**PAGE 4**

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

...

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

...

Owner.

...

~~**§ 4.6** Other:~~

...

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

...

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

...

month.

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...

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

...

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

...

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

**PAGE 5**

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

...

5% (five percent)

...

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

...

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

...

~~**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include~~

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

...

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

...

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

**PAGE 6**

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

...

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

...

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

...

~~*(Insert rate*~~

...

**§ 5.4 Prompt Payment to Subcontractors**

...

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

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an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

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

...

**§ 6.1.1 Mediation**

...

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

...

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

...

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

...

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

**PAGE 7**

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

...

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

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...

Don Bielinski
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Mike Luurtsema
President
Construction Results Corporation
5465 Highway 169 North
Plymouth, MN 55442
Mike.Luurtsema@ConstructionResults.com

**PAGE 8**

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

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

...

January 31, 2020

...

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

...

~~[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:~~

...

EXH-B Project Charter

**PAGE 9**

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

...

EXH-C Owner Insurance

...

EXH-D Project Schedule

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...

~~[ ] The Sustainability Plan:~~

...

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:44:48 CT on 01/26/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

Don Bielinski

Digitally signed by Don Bielinski
DN: C=US, E=Donald.Bielinskijr@mpls.k12.mn.us, O=Minneapolis Public Schools, OU=CPCM, CN=Don Bielinski
Reason: I agree to specified portions of this document
Date: 2024.01.29 13:10:02-06'00'

*(Signed)*

Project Manager

*(Title)*

01/29/2024

*(Dated)*

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# AIA® Document A101® – 2017 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty-sixth day of January in the year Two Thousand Twenty-four
*(In words, indicate day, month and year.)*

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

Longfellow Fire Sprinkler Upgrade
3017 E 31st St.
Minneapolis, MN 55411

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

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

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

Construction Results Corporation
5465 Highway 169 North
Plymouth, MN 55442

**TABLE OF ARTICLES**

**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**

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

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

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

### ARTICLE A.1 GENERAL

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

### ARTICLE A.2 OWNER'S INSURANCE

**§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.



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**§ A.2.2 Liability Insurance**
The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**§ A.2.3 Required Property Insurance**
**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.


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*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

## ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

### § A.3.1 General

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

### § A.3.2 Contractor's Required Insurance Coverage

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

### § A.3.2.2 Commercial General Liability

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined is ECH-C Owner Insurance, providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

**.2** personal injury and advertising injury;


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.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and
.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
.3 Claims for bodily injury other than to employees of the insured.
.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
.8 Claims related to roofing, if the Work involves roofing.
.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
.10 Claims related to earth subsidence or movement, where the Work involves such hazards.
.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance .

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance .

*(Paragraph deleted)*

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance .

.

*(Paragraphs deleted)*

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The


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Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1 as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | Full contract value |
| Performance Bond | Full contract value |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*
## *AIA® Document A101® – 2017 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty-sixth day of January in the year Two Thousand Twenty-four

...

Longfellow Fire Sprinkler Upgrade
3017 E 31st St.
Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Ave.
Minneapolis, MN 55411

...

Construction Results Corporation
5465 Highway 169 North
Plymouth, MN 55442

**PAGE 4**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined is ECH-C Owner Insurance, providing coverage for claims including

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**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance .

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

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**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance .

~~**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits ~~of not less than ($ ) per claim and ($ ) in the aggregate.~~as defined in EXH-C Owner Insurance .

.

~~**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits ~~of not less than ($ ) per claim and ($ ) in the aggregate.~~as defined in EXH-C Owner Insurance.
**PAGE 6**

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section ~~A.3.3.1.~~
~~*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*~~A.3.3.1 as defined in EXH-C Owner Insurance.

~~[ ] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*~~

~~[ ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for Work within fifty (50) feet of railroad property.~~

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~~[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.~~

~~[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.~~

~~[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.~~

~~[ – ] **§ A.3.3.2.6 Other Insurance**~~
~~*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*~~

| ~~**Coverage**~~ | ~~**Limits**~~ |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | Full contract value |
| Performance Bond | Full contract value |

...

None

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# AIA® Document A201® – 2017

## *General Conditions of the Contract for Construction*

**for the following PROJECT:**
*(Name and location or address)*

Longfellow Fire Sprinkler Upgrade
3017 E. 31st St.
Minneapolis, MN 55406

**THE OWNER:**
*(Name, legal status and address)*

Minneapolis Public Schools Special School District 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE ARCHITECT:**
*(Name, legal status and address)*

KFI Engineers
670 County Road B West
St. Paul, MN 55113

**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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.2 Correlation and Intent of the Contract Documents

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.


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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document


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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 Evidence of the Owner's Financial Arrangements

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.


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**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.


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**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.


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**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 Warranty

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.


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### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and


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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will


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specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.


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### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.


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**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.


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## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.


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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.


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**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

**.1** The change in the Work;
**.2** The amount of the adjustment, if any, in the Contract Sum; and
**.3** The extent of the adjustment, if any, in the Contract Time.

### § 7.3 Construction Change Directives

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

**.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
**.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
**.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
**.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:


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.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.


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**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

**§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

**§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

**§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.


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**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

### § 9.4 Certificates for Payment

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### § 9.5 Decisions to Withhold Certification

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;


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.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.


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### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.


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**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to


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.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will


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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act


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or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**


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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

**§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

**§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

**§ 12.2 Correction of Work**

**§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.


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**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and


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approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.


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**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- **.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.


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**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.


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**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.


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**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.


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**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



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Minneapolis, MN 55406

...

Minneapolis Public Schools Special School District 1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

KFI Engineers
670 County Road B West
St. Paul, MN 55113

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Don Bielinski

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DN: C=US, E=Donald.Bielinskijr@mpls.k12.mn.us, O=Minneapolis Public Schools, OU=CPCM, CN=Don Bielinski
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Date: 2024.01.29 13:12:14-06'00'

*(Signed)*

Project Manager

*(Title)*

01/29/2024

*(Dated)*

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# AIA® Document E203® – 2013

## *Building Information Modeling and Digital Data Exhibit*

This Exhibit dated the Twenty-sixth day of January in the year Two Thousand Twenty-Four is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
*(Name and location or address of the Project)*

Longfellow Fire Sprinkler Upgrade
3017 E. 31st St.
Minneapolis, MN 55406

**TABLE OF ARTICLES**


1 GENERAL PROVISIONS

2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

3 DIGITAL DATA PROTOCOLS

4 BUILDING INFORMATION MODELING PROTOCOLS

5 OTHER TERMS AND CONDITIONS


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

### ARTICLE 1 GENERAL PROVISIONS

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project,.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

**§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.



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**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:
*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

**§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

**ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**

**§ 2.1** The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has


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permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| **Anticipated Digital Data** | **Applicability to the Project** *(Indicate Applicable or Not Applicable)* | **Location of Detailed Description** *(Section 3.1.1 below or in an attachment to this exhibit and identified below)* |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.


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*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*

*(Paragraph deleted)*
§ .

**§ 3.2.3** The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

**§ 3.4 Unauthorized Use**
**§ 3.4.1 Prior to Establishment of Digital Data Protocols**
If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 3.4.2 Following Establishment of Digital Data Protocols**
Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

**§ 3.5 Digital Data Management**
**§ 3.5.1** Centralized electronic document management system use on the Project shall be:
*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

[ ] The Parties do not intend to use a centralized electronic document management system on the Project.

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.
*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

| Responsible Project Participant | Project Milestone |
|---|---|
| Contractor | Project Construction begins |

**ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS**
**§ 4.1** If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:


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[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

**§ 4.2 Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

| Project Portion for Modeling | Responsible Project Participant |
|---|---|
| Project design | Architect |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.
*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**§ 4.5 Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

**§ 4.5.1** The Modeling protocols shall address the following:

**.1** Identification of the Model Element Authors;
**.2** Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
**.3** Identification of the required LOD of each Model Element at each identified Project milestone;
**.4** Identification of the construction classification systems to be used on the Project;
**.5** The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
**.6** The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
**.7** Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
**.8** Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
**.9** Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*


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None

*(Paragraph deleted)*
§ .

**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

**§ 4.7 Unauthorized Use**

**§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

**§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

| Responsible Project Participant | Project Milestone |
|---|---|

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

**.1** Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
**.2** Model file storage location(s)
**.3** Processes for transferring and accessing Model files
**.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.
**.5** Processes for aggregating Model files from varying software platforms
**.6** Model access rights
**.7** Identification of design coordination and clash detection procedures.
**.8** Model security requirements
**.9** Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

**.1** Collect incoming Models:
  **.1** Coordinate submission and exchange of Models


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.2 Create and maintain a log of Models received
.3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
.4 Maintain a record copy of each Model file received

.2 Aggregate Model files and make them available for Authorized Uses
.3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
.4 Manage Model access rights
.5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and AutoCAD

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model | Applicability to Project *(Applicable or Not Applicable)* | Responsible Project Participant | Location of Detailed Description of Requirements and Services *(Section 4.10 below or in an attachment to this exhibit and identified below)* |
|---|---|---|---|
| **§ 4.9.1** Remodeling | Applicable | Owner | |
| **§ 4.9.2** Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** Energy Management | Applicable | Owner | |
| **§ 4.9.5** Space Management | Applicable | Owner | |
| **§ 4.9.6** Maintenance Management | Applicable | Owner | |
| | | | |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

**ARTICLE 5 OTHER TERMS AND CONDITIONS**

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.


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# *Additions and Deletions Report for*

## *AIA® Document E203® – 2013*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:43:51 CT on 01/26/2024.

**PAGE 1**

This Exhibit dated the Twenty-sixth day of January in the year Two Thousand Twenty-Four is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

Longfellow Fire Sprinkler Upgrade
3017 E. 31st St.
Minneapolis, MN 55406

...

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the ~~Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.~~ Project,.

...

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**PAGE 2**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~ .

...

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~3.

**PAGE 3**

| | | |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |

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| | | |
|---|---|---|
| Architect's pre-construction submittals | Applicable | MPS Central Files |
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| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

**§ 3.2.2** ~~The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.~~

**§** .

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data ~~protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.~~ protocols.

...

Following agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

...

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth ~~in the latest version of G201–2013 approved~~ d by the Project Participants.

...

Contractor Project Construction begins

**PAGE 5**

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design Architect

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**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project ~~Participants and further described for each LOD in AIA Document G202–2013.~~

Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**PAGE 6**

None

**§ 4.5.3** ~~The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.~~

**§** .

...

Following agreement to, and documentation of, the Modeling ~~protocols in AIA Document G202–2013,~~ protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

**.1** Model origin point, coordinate system, precision, file formats and ~~units~~units. The model shall be accurately geo-located to agreed-upon reference datum

...

**.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**PAGE 7**

Transmit to MPS the model in PDF, Revit and AutoCAD

...

| | | | | |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |

...

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As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:43:51 CT on 01/26/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.

Don Bielinski

Digitally signed by Don Bielinski
DN: C=US, E=Donald.Bielinskijr@mpls.k12.mn.us, O=Minneapolis Public Schools, OU=CPCM, CN=Don Bielinski
Reason: I agree to specified portions of this document
Date: 2024.01.29 13:13:29-06'00'

_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

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ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

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3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

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b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

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d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

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# Exhibit B – Project Charter

## Project Name and Number

## Description

## Contract Sum

The Contract Sum shall be $690,000.00

### Alternates

| Item | Price | Status |
|---|---|---|
| N/A | | |
| | | |

### Conditions

| Item | Price | Conditions for Acceptance |
|---|---|---|
| N/A | | |
| | | |

### Allowances

| Item | Price |
|---|---|
| N/A | |
| | |

### Unit Prices

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|
| N/A | | |

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# Exhibit D – Project Schedule

## Project Name and Number

MPS Project Number: 24LONG001
Project Name: Longfellow Fire Sprinkler Upgrade
School: Longfellow Alternative High School
Address: 3017 E. 31st St. Minneapolis, MN 55406
OP#: 24-2409

## Description

Upgrade and replace the wet and dry sprinkler system, throughout Longfellow School, per the project plans and specifications prepared by KFI Engineers.

## Schedule

Last day of school and option for contractor to begin mobilizing: June 14, 2024
Last Day for staff and construction commences: June 17, 2024
Juneteenth Holiday: June 19, 2024 (MPS Buildings Closed)
Substantial Completion: on or before August 16, 2024
MPS Staff back in Building: August 19, 2024
Final Completion: On or before August 30, 2024
First day of School: September 3, 2024

### Substantial Completion

The Work will be substantially complete on or before _August 16, 2024_.

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# BID ACKNOWLDGMENTS

**Date:** 1/26/2024
**Project:** MPS Longfellow Fire Sprinkler Upgrade
**KFI Project Number:** 23-0500
**Project Description:** Fire sprinkler system replacement.

**Bidder:** Construction Results Corporation

Initial line items below:

JS At the completion of this project, the entire attic space and first floor shall be fully sprinklered as per NFPA 13 regardless of existing fire sprinkler system design or conditions.

JS It is the contractor's responsibility to properly size and design the system as per NFPA 13 and MPS Master Specifications. All sprinkler branch-lines, mains, and sprinklers must follow the requirements found in MPS Division 21 specifications.

JS Contractor acknowledges and confirms understanding of the project scope and bid documents, and bid the project for substantial completion on or before August 16, 2024.

JS The building will be occupied after the substantial completion date of August 16th, 2024. If the sprinkler system is not fully operational by that date, a 24/7 fire watch will need to provided at the expense of the contractor.

JS All installation work shall be performed from a ladder except as noted by the project documents.

JS It is the contractor's responsibility to ensure the building is protected from any damage and properly cleaned at the completion of the project.

JS Contractor is responsible for temporarily moving or working around items in the building. All items moved for construction will be returned to their original position.

Contractor acknowledges the items listed above.



Find a way.

# FY21 North High School Phase 3

## Contract Sum: $337,900

## Contractor: Ford Metro, Inc.

## Project Name and Number

North High School Phase 3 Work Scope 8F Exterior Glass and Glazing
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $337,900 | accepted |
| **Alt #1: Toilets D140 & D240** | $0 | rejected |
| **Alt #2: Toilets D106 & D206** | $0 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $1,930 | rejected |
| **Alt #4: Auditorium Seating** | $0 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Ford Metro, Inc
3121 40th Avenue NW
Rochester, MN 55901

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 8F Exterior Glass and Glazing
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.


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**TABLE OF ARTICLES**


1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK


## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.


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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be three hundred thirty-seven thousand, nine hundred dollars ($ 337,900 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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User Notes: (828785234)

**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

**.5** Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**
**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**
**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and
**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**
**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
**.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

**ARTICLE 6 DISPUTE RESOLUTION**
**§ 6.1 Initial Decision Maker**
The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:


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*(Name, address, email address, and other information)*

Kevin Swanson
President
Ford Metro, Inc
3121 40th Avenue NW
Rochester, MN 55901

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**.2** AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

**.3** AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*
*(Table deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

.9 Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors complete bid

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | KEVIN SWANSON President. |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Ford Metro, Inc
3121 40th Avenue NW
Rochester, MN 55901

...

North High School Phase 3 Work Scope 8F Exterior Glass and Glazing
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ – ] Not later than ( ) calendar days from the date of commencement of the Work.~~

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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~~[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

~~[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*~~
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be three hundred thirty-seven thousand, nine hundred dollars ($ 337,900 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract ~~Sum:~~
Sum are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Price~~ |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if ~~any:~~
~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~any are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

**§ 4.3** ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
~~**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~**§ 4.3.2** The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Kevin Swanson
President
Ford Metro, Inc
3121 40th Avenue NW
Rochester, MN 55901

...

**§ 8.5** ~~Insurance and Bonds~~**Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule

[ ] ~~AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ – ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors complete bid

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:39:34 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____ day of ___January_____ in the year __2024____
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 08F Exterior Glass and Glazing
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

Ford Metro, Inc 3121 40th Avenue NW
Rochester, MN 55901

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions

### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

### ARTICLE A.2 OWNER'S INSURANCE

#### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.



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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
**.2** personal injury and advertising injury;
**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
**.4** bodily injury or property damage arising out of completed operations; and


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**.5** the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

**.1** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

**.2** Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

**.3** Claims for bodily injury other than to employees of the insured.

**.4** Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

**.5** Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

**.6** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

**.7** Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

**.8** Claims related to roofing, if the Work involves roofing.

**.9** Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

**.10** Claims related to earth subsidence or movement, where the Work involves such hazards.

**.11** Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*


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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $337,900 |
| Performance Bond | $337,900 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019 Exhibit A*

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**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____day of ___January_____in the year __2024____

...

North High School Phase 3 Work Scope 08F Exterior Glass and Glazing
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Ford Metro, Inc 3121 40th Avenue NW
Rochester, MN 55901

**PAGE 2**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**PAGE 4**

**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

~~**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ – ] **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $337,900 |
| Performance Bond | $337,900 |

...

None

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# AIA® Document A232® – 2019

## *General Conditions of the Contract for Construction,* *Construction Manager as Adviser Edition*

**for the following PROJECT:**
*(Name, and location or address)*

North High School Phase 3 Work Scope 8F Exterior Glass and Glazing
1500 James Avenue, Minneapolis, MN 55411

**THE CONSTRUCTION MANAGER:**
*(Name, legal status, and address)*

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE ARCHITECT:**
*(Name, legal status, and address)*

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.


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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.

**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**§ 1.1.3 The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

**§ 1.1.7 The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**§ 1.1.8 The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.9 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.


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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

**§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

**§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

**§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to


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whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

**§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

**§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

**§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

**§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court


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or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.4** If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

**§ 2.3.5** If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 2.3.7** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.3.8** The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants'


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additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

**§ 3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.


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**§ 3.2.2** The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

**§ 3.2.4** If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.6** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

**§ 3.3.5** The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.


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**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

**§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

**§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents


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and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices, and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager,


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determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of


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commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

### § 3.11 Documents and Samples at the Site

**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

### § 3.12 Shop Drawings, Product Data, and Samples

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review


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by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must


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satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction


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Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

## ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

**§ 4.1.3** Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's consultants (1) during construction; (2) until final payment is due; and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.


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**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.

**§ 4.2.3** The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

**§ 4.2.4** The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

**§ 4.2.5** The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

**§ 4.2.7** The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.


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**§ 4.2.9** Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

**§ 4.2.10** The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

**§ 4.2.11** The Architect will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.

**§ 4.2.12** Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.13** The Construction Manager will prepare Change Orders and Construction Change Directives.

**§ 4.2.14** The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.15** Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

**§ 4.2.16** The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

**§ 4.2.17** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.


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**§ 4.2.18** The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

*(Paragraph deleted)*

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written


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confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

**§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

**.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

**.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

**§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

**§ 6.1.3** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors


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shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not reasonably discoverable.

**§ 6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

**§ 6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or


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substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

**.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

**.2** For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

**.3** For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

**.4** For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

**.5** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

**.6** In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

**§ 7.2 Change Orders and Change Proposals**

**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

**.1** The change in the Work;

**.2** The amount of the adjustment, if any, in the Contract Sum; and

**.3** The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without


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invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

**.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

**.2** Unit prices stated in the Contract Documents or subsequently agreed upon;

**.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

**.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

**.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;

**.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);

**.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

**.5** Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on


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the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

### § 8.2 Progress and Completion

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.


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**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

**.1** Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

**.2** Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);

**.3** Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

**.4** Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

**.5** Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

**.1** Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

**.2** In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

**.3** Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

**.4** With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

**.5** Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the


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Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

**.6** No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

**.7** Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

### § 9.3 Applications for Payment

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.


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**§ 9.3.1.2** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

> "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

**§ 9.4 Certificates for Payment**

**§ 9.4.1** Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.


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**§ 9.4.2** Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 9.4.2.1** Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

**§ 9.4.3** The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.6** The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of


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.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor or other Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

**§ 9.6.3** The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.


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**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect then the Contractor may, upon ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up which shall be accomplished as provided in Article 7.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and when the Architect issues a Certificate of Substantial Completion.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.3** Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.


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**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents


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and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

### § 9.11 Damages for Delay

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the


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Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

**§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- **.4** construction or operations by the Owner, Separate Contractors, or other Contractors.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.


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**§ 10.3 Hazardous Materials**

**§ 10.3.1** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**.1** Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

**.2** The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

*(Paragraph deleted)*

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.


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**§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

**§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.


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**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors,


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Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Paragraph deleted)*

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

**§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.


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## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

**§ 12.1.1** If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby.

#### § 12.2.2 After Substantial Completion

*(Paragraphs deleted)*

**§ 12.2.2.1**If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.


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**§ 12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the


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Contractor shall give a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe procedures. The Owner shall bear such costs, except as provided in Section 13.4.3.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

**§ 13.4.5** If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.5 Interest**

All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.


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Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

**.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

**.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

**.3** Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

**.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.1.5 No Right to Stop Work for Non-Payment

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10)


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days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

**.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

**.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

**.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

**.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

**.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

**.2** Accept assignment of subcontracts pursuant to Section 5.4; and

**.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

**.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

**.2** that an equitable adjustment is made or denied under another provision of this Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

**.1** cease operations as directed by the Owner in the notice;

**.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

**.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

*(Paragraph deleted)*


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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

**§ 15.1.1 Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

**§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

**§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

**§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.


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*(Paragraphs deleted)*

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

*(Paragraphs deleted)*

**§ 15.3 Mediation**

**§ 15.3.1** Any claim, dispute or other matter in question or arising out of or related to the Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

*(Paragraphs deleted)*


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# *Additions and Deletions Report for*
## *AIA® Document A232® – 2019*

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**PAGE 1**

North High School Phase 3 Work Scope 8F Exterior Glass and Glazing
1500 James Avenue, Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

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**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The ~~Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

...

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the ~~indicated~~ intended results.

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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

...

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

...

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit,~~ Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol ~~Form,~~ Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or ~~authorization.~~ authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

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**§ 2.3.5** ~~The~~ If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~ Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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**§ 3.1.3** The Contractor shall ~~not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.~~hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

**§ 3.2.1** ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally~~ The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors,

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inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, ~~and correlated personal observations with requirements of the Contract Documents.~~has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

**§ 3.2.2** ~~Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The ~~Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.~~Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

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**§ 3.2.4** If the Contractor believes that ~~additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.6** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

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**§ 3.3.4** The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

**§ 3.3.5** The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

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**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

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**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

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**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

...

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume ~~appropriate~~ full responsibility for such Work and shall bear the ~~costs attributable~~

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~~to correction.~~attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ~~14~~ ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.
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**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work.~~ Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

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**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

...

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.
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**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

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~~The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.
**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.
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**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

...

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and ~~approved by the Architect.~~accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with ~~approved~~ accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's ~~approval~~ acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written ~~approval~~ acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's ~~approval~~ acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's ~~approval~~ acceptance of a resubmission shall not apply to such revisions.
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**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such

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facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

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**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

...

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.



**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall ~~indemnify~~ indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

...

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

...

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's ~~representatives during construction until the date the Architect issues the final Certificate for Payment.~~ consultants (1) during construction; (2) until final payment is due; and (3) with the

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Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract ~~Documents.~~Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the ~~portion of the Work completed,~~ Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work ~~observed~~ is being performed in a manner indicating that the Work, when ~~fully~~ completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.
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**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the ~~Owner.~~ Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

...

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.
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**§ 4.2.11** The Architect ~~will~~ will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness~~ or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.
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**§ 4.2.18** The Architect will interpret and decide matters concerning performance ~~under, and~~ under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness.~~ with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** ~~Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.~~Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

~~**§ 4.2.21** The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

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**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

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**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time~~ The Contract Sum shall be increased or decreased by the ~~difference, if any,~~ difference in cost occasioned by such change, and an appropriate Change Order shall be ~~issued before commencement of the substitute Subcontractor's Work.~~ issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

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**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

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~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

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**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not ~~apparent.~~reasonably discoverable.

**§ 6.2.3** ~~The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or~~

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~~defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.~~Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

...

**§ 6.2.5** ~~The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.~~Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

...

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and ~~rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.~~rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

...

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. ~~An order for a minor change in the Work may be issued by the Architect alone.~~

...

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

**.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

**.2** For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

**.3** For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

**.4** For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

**.5** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

**.6** In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

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**§ 7.2 Change Orders and Change Proposals**

~~A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:~~**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

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**.3** The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

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**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others;~~others (at rates approved by the Owner);

...

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective ~~immediately and shall be recorded as a Change Order.~~immediately.

...

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**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for ~~Payment.~~ Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in ~~writing.~~ writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

...

**§ 8.1.4** The term "day" ~~as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.~~shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract ~~Time.~~Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

**.1** Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

**.2** Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets

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back on schedule as established by the CPM Schedule Report (including any updates thereto);

.3 Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

.4 Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

.5 Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

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**§ 8.3.1** If the Contractor is delayed at any time in the ~~commencement or~~ progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5)~~ or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

.1 Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

.2 In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

.3 Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

.4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

.5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

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**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be~~ Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. ~~This~~ The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment ~~prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required,~~ for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and ~~suppliers, and shall reflect retainage if provided for in the Contract Documents.~~material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

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**§ 9.3.1.2** ~~Applications for Payment~~ Such applications shall not include requests for payment ~~for portions of the Work for which the~~ of amounts the Contractor does not intend to pay a Subcontractor ~~or supplier,~~ or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

"That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

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**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

...

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect ~~or awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven~~ ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and ~~start-up, plus interest as provided for in the Contract Documents.~~start-up which shall be accomplished as provided in Article 7.

...

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended ~~use.~~use and when the Architect issues a Certificate of Substantial Completion.

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**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or ~~corrected prior to final payment.~~ corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

...

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special

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warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6), if required by the Owner,~~ including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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**§ 9.11 Damages for Delay**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

...

~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.~~**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

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If either party suffers injury or ~~damage~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ ten (10) days after ~~discovery.~~ first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.

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**§ 10.3.1** ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify~~ In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless,

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the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect ~~of the condition.~~in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**.1** Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

**.2** The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** ~~Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

**§ 10.3.4** ~~The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

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Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

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In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

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Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~** ~~Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

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**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

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**~~§ 11.3.2~~** ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

**...**

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**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall ~~deposit the insurance proceeds in a separate account and~~ make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

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The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary ~~thereby, shall be at the Contractor's expense.~~thereby.

...

~~**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.~~

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~~**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.~~

~~**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

**§ 12.2.2.1** If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.4** ~~The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.~~ If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.5** ~~Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.~~ The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public ~~authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice~~ authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for~~ observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely~~ a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for such procedures. Such~~ observe procedures. The Owner shall bear such costs, except as provided in Section ~~13.4.3, shall be at the Owner's expense.~~13.4.3.

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~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the

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Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

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**§ 14.1.5 No Right to Stop Work for Non-Payment**

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

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**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

...

~~**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

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**§ 15.1.1 Definition.** A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms ~~of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out~~ of ~~or relating to~~ the Contract. The responsibility to substantiate Claims shall rest with ~~the party making the Claim.~~ the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

...

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**§ 15.1.3.1** Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the ~~other party~~ Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party~~ the Contractor under this Section 15.1.3.1 shall be initiated within ~~21~~ ten (10) days after occurrence of the event giving rise to such Claim or within ~~21~~ ten (10) days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for ~~an~~ any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

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~~**§ 15.1.7 Waiver of Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

...

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

~~**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation~~

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~~within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

~~**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

~~**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy~~ Any claim, dispute or other matter in question or arising out of or related to the ~~Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** The parties shall ~~endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

~~**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~**§ 15.4 Arbitration**~~

~~**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

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~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:45:05 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A232™ – 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# AIA® Document E203® – 2013

## *Building Information Modeling and Digital Data Exhibit*

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
*(Name and location or address of the Project)*

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

**TABLE OF ARTICLES**


1 GENERAL PROVISIONS

2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

3 DIGITAL DATA PROTOCOLS

4 BUILDING INFORMATION MODELING PROTOCOLS

5 OTHER TERMS AND CONDITIONS


### ARTICLE 1 GENERAL PROVISIONS

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project,.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

**§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.



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**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:
*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

**§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

**ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**

**§ 2.1** The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital


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Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows:
*(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| **Anticipated Digital Data** | **Applicability to the Project** *(Indicate Applicable or Not Applicable)* | **Location of Detailed Description** *(Section 3.1.1 below or in an attachment to this exhibit and identified below)* |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*

Init.
/
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*(Paragraph deleted)*
§ .

**§ 3.2.3** The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

**§ 3.4 Unauthorized Use**

**§ 3.4.1 Prior to Establishment of Digital Data Protocols**

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 3.4.2 Following Establishment of Digital Data Protocols**

Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

**§ 3.5 Digital Data Management**

**§ 3.5.1** Centralized electronic document management system use on the Project shall be:
*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

[ ] The Parties do not intend to use a centralized electronic document management system on the Project.

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.
*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

| Responsible Project Participant | Project Milestone |
|---|---|
| Contractor | Project Construction begins |

## ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

**§ 4.1** If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:


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[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

**§ 4.2 Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

| Project Portion for Modeling | Responsible Project Participant |
|---|---|
| Project design | Architect |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.
*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**§ 4.5 Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

**§ 4.5.1** The Modeling protocols shall address the following:

**.1** Identification of the Model Element Authors;
**.2** Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
**.3** Identification of the required LOD of each Model Element at each identified Project milestone;
**.4** Identification of the construction classification systems to be used on the Project;
**.5** The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
**.6** The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
**.7** Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
**.8** Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
**.9** Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

None


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*(Paragraph deleted)*
§ .

**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

**§ 4.7 Unauthorized Use**

**§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

**§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

| Responsible Project Participant | Project Milestone |
|---|---|

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- **.1** Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
- **.2** Model file storage location(s)
- **.3** Processes for transferring and accessing Model files
- **.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.
- **.5** Processes for aggregating Model files from varying software platforms
- **.6** Model access rights
- **.7** Identification of design coordination and clash detection procedures.
- **.8** Model security requirements
- **.9** Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- **.1** Collect incoming Models:
  - **.1** Coordinate submission and exchange of Models
  - **.2** Create and maintain a log of Models received


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.3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
.4 Maintain a record copy of each Model file received

.2 Aggregate Model files and make them available for Authorized Uses
.3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
.4 Manage Model access rights
.5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and AutoCAD

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model | Applicability to Project *(Applicable or Not Applicable)* | Responsible Project Participant | Location of Detailed Description of Requirements and Services *(Section 4.10 below or in an attachment to this exhibit and identified below)* |
|---|---|---|---|
| **§ 4.9.1** Remodeling | Applicable | Owner | |
| **§ 4.9.2** Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** Energy Management | Applicable | Owner | |
| **§ 4.9.5** Space Management | Applicable | Owner | |
| **§ 4.9.6** Maintenance Management | Applicable | Owner | |
| | | | |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

**ARTICLE 5 OTHER TERMS AND CONDITIONS**

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.


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# *Additions and Deletions Report for*

## *AIA® Document E203® – 2013*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:46:08 CT on 01/30/2024.

**PAGE 1**

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the ~~Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.~~ Project,.

...

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**PAGE 2**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~ .

...

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~3.

**PAGE 3**

| | | |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |

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| | | |
|---|---|---|
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

**§ 3.2.2** ~~The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.~~

**§** .

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data ~~protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.~~ protocols.

...

Following agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[ **X** ] The Parties intend to use a centralized electronic document management system on the Project.

...

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth ~~in the latest version of G201–2013 approved~~ d by the Project Participants.

...

Contractor Project Construction begins

**PAGE 5**

[ **X** ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design Architect

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project ~~Participants and further described for each LOD in AIA Document G202–2013.~~

Participants.

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Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

...

None

~~**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.~~

**§** .

**PAGE 6**

Following agreement to, and documentation of, the Modeling ~~protocols in AIA Document G202–2013,~~ protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

**.1** Model origin point, coordinate system, precision, file formats and ~~units~~units. The model shall be accurately geo-located to agreed-upon reference datum

...

**.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**PAGE 7**

Transmit to MPS the model in PDF, Revit and AutoCAD

...

| | | | | |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |

...

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

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As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:46:08 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 8F Exterior Glass and Glazing

This work scope includes all exterior glass and glazing work for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $337,900

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $0 | Rejected |
| **Alt#2: Toilets D106 & D206** | $0 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $1,930 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 8F Exterior Glass and Glazing

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School:  September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on the dates provided above.

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Grazzini Brothers & Company
1175 Eagan Industrial Road
Eagan, MN 55121

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 9D Flooring
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.
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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

## ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

**§ 4.2 Stipulated Sum**

**§ 4.2.1** The Contract Sum shall be seven hundred, ninety-four thousand, seven hundred, thirty dollars ($ 794,730 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**

**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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§ 4.3 Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 4.4 Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 4.5 Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

§ 4.6 Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

.5 Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**

**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**

**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and

.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**

**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

## ARTICLE 6 DISPUTE RESOLUTION

**§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation
The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**
For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ **X** ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**
**§ 7.1 Where the Contract Sum is a Stipulated Sum**
**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*
**ARTICLE 8 MISCELLANEOUS PROVISIONS**
**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:

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*(Name, address, email address, and other information)*

Lee Ahola
Project Manager
Grazzini Brothers & Company
1175 Eagan Industrial Road
Eagan, MN 55121

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

.1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

.2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

.3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

.5 Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

.6 Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

.7 Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |

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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors bidding documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* Gregory P. Grazzini |
| Ibrahima Diop Sr. Officer of Finance and Operations | CEO/President |
| *(Printed name and title)* | *(Printed name and title)* |

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# *Additions and Deletions Report for*
## *AIA® Document A132® – 2019*

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**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Grazzini Brothers & Company
1175 Eagan Industrial Road
Eagan, MN 55121

...

North High School Phase 3 Work Scope 9D Flooring
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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§ 1.2 In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

§ 1.3 Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.



[ X ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ ] Not later than ( ) calendar days from the date of commencement of the Work.~~

~~[ ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ ] Stipulated Sum, in accordance with Section 4.2 below~~

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~~[ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

~~[ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*~~
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be seven hundred, ninety-four thousand, seven hundred, thirty dollars ($ 794,730 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract ~~Sum:~~
Sum are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Price~~ |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if ~~any:~~
~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~any are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

**§ 4.3** ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
~~**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~**§ 4.3.2** The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

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§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( percent ( %) of the standard rental rate paid at the place of the Project.

§ 4.3.6 Unit prices, if any:
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum PriceUnit prices, if any, are defined in EXH-B Project Charter.
§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.4.2 The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( percent ( %) of the standard rental rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

**§ 4.4.7 Guaranteed Maximum Price**
§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ( ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

**§ 4.4.7.2 Alternates**
§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

| Item | Price |
|---|---|

§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:
*(Identify each allowance.)*

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

§ 5.1.4.3 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price~~

~~§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ 5.1.5.3 In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~§ 5.1.5.3.1 The amount of each progress payment shall first include:~~

- ~~.1 The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~.2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~.3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~§ 5.1.5.3.2 The amount of each progress payment shall then be reduced by:~~

- ~~.1 The aggregate of any amounts previously paid by the Owner;~~
- ~~.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Retainage withheld pursuant to Section 5.1.7.~~

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§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.5.6 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.5.7 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Cost of the Work with a Guaranteed Maximum Price**

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 5.1.6.2.1 The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6.2.2 The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 5.1.6.2.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.1.6.4 In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.4.1 The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.



[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~
~~**§ 7.2.1 Termination**~~
~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~
~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

~~.1 Take the Cost of the Work incurred by the Contractor to the date of termination;~~
~~.2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
~~.3 Subtract the aggregate of previous payments made by the Owner; and~~
~~.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232–2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~
~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~
~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Lee Ahola
Project Manager
Grazzini Brothers & Company
1175 Eagan Industrial Road
Eagan, MN 55121

...

**§ 8.5 ~~Insurance and Bonds~~Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™ 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

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| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

~~*[ ] AIA Document A132™ 2019, Exhibit B, Determination of the Cost of the Work*~~

[ ] ~~AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235 2019 incorporated into this Agreement.)*~~

~~[ ] The Sustainability Plan:~~

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| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
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| ... | | |
| contractors bidding documents | | |
| ... | | |
| Ibrahima Diop Sr. Officer of Finance and Operations | | |

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:52:02 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 31st day of January in the year 2024
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 9D Flooring
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

Grazzini Brothers & Company 1175 Eagan Industrial Road
Eagan, MN 55121

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions

### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

### ARTICLE A.2 OWNER'S INSURANCE

#### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.


Init. /

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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance,** for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance,** for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance,** to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance,** for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance,** for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance,** to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

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[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

## ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

### § A.3.1 General

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

### § A.3.2 Contractor's Required Insurance Coverage

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

### § A.3.2.2 Commercial General Liability

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
.2 personal injury and advertising injury;
.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and


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.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*


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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $794,730 |
| Performance Bond | $794,730 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*
## *AIA® Document A132® – 2019 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:52:57 CT on 01/30/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 31st day of January in the year 2024

...

North High School Phase 3 Work Scope 9D Flooring
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Grazzini Brothers & Company 1175 Eagan Industrial Road
Eagan, MN 55121

**PAGE 2**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**PAGE 4**

**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

§ A.3.2.5 Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

§ A.3.2.7 ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

§ A.3.2.8 ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

~~§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**PAGE 6**

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

§ A.3.3.2 The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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~~*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*~~

~~[ – ] § A.3.3.2.1 If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:~~
~~*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*~~

~~[ – ] § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.~~

~~[ – ] § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.~~

~~[ – ] § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.~~

~~[ – ] § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.~~

~~[ – ] § A.3.3.2.6 Other Insurance~~
~~*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*~~

| ~~Coverage~~ | ~~Limits~~ |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $794,730 |
| Performance Bond | $794,730 |

...

None

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MINNEAPOLIS PUBLIC SCHOOLS

# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 9D Flooring

This work scope includes all flooring work for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $794,730

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $108,300 | Rejected |
| **Alt#2: Toilets D106 & D206** | $108,300 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $16,450 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE

   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders "all risk" Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

MINNEAPOLIS PUBLIC SCHOOLS

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 9D Flooring

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School: September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

## Substantial Completion

The Work will be substantially complete on the dates provided above.

# FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing

## Contract Sum: $144,000

## Contractor: Greiner Construction, Inc.

## Project Name and Number

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing
Minneapolis Public Schools Project Number 24MULTI004
Official Publication No. 24-2413

## Description

Wood floor refinishing for the gymnasiums at Olson Middle School, Hale School, and Windom School

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $144,000 | accepted |

## Contract Documents

AIA Document A101-2017
AIA Document A101 Exhibit A-2017
Exhibit B – Project Charter
Exhibit C – Project Schedule
AIA Document E203-2013
AIA Document A201-2017

# AIA® Document A101® – 2017

## *Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum*

**AGREEMENT** made as of the Twenty day of February in the year 2024
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address and other information)*

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

for the following Project:
*(Name, location and detailed description)*

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing
Flooring replacement at Olson Middle School, Hale School and Windom School.

The Architect:
*(Name, legal status, address and other information)*

Miller Dunwiddie
100 Washington Avenue South
Suite 500
Minneapolis, MN 55401

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.
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**TABLE OF ARTICLES**

**1 THE CONTRACT DOCUMENTS**

**2 THE WORK OF THIS CONTRACT**

**3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**4 CONTRACT SUM**

**5 PAYMENTS**

**6 DISPUTE RESOLUTION**

**7 TERMINATION OR SUSPENSION**

**8 MISCELLANEOUS PROVISIONS**

**9 ENUMERATION OF CONTRACT DOCUMENTS**

**EXHIBIT A INSURANCE AND BONDS**

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion**

**§ 3.3.1** The Contractor shall achieve Substantial Completion of the entire Work:
*(Check one of the following boxes and complete the necessary information.)*


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[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ X ] By the following date: Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table Deleted)*

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

## ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

### § 4.2 Alternates

**§ 4.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Table Deleted)*

**§ 4.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.5** Liquidated damages


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*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*
damages for delay (but not as penalty), Contractor shall pay Owner $1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the
Owner.

*(Paragraph Deleted)*

*After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner $1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Architect, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

*(Paragraph Deleted)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- **.1** That portion of the Contract Sum properly allocable to completed Work;
- **.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- **.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- **.1** The aggregate of any amounts previously paid by the Owner;


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.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and

.5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Paragraph Deleted)*

5% (five percent)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*
determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

*(Paragraph Deleted)*

**§ 5.1.8** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

**§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and


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.2 a final Certificate for Payment has been issued by the Architect.
.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for
Payment.

**§ 5.3 Interest**
Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.
*(Paragraph Deleted)*

**§ 5.4 Prompt Payment to Subcontractors**

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

## ARTICLE 6 DISPUTE RESOLUTION

**§ 6.1 Initial Decision Maker**
The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017.

**§ 6.1.1 Mediation**

Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

*If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor mayrequest Binding Dispute Resolution.*

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

**§ 6.2 Binding Dispute Resolution**
For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*


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[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[ X ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Diedra Geye
1250 West Broadway Avenue
Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:
*(Name, address, email address, and other information)*

Joe Weatherly
Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.


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**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.7** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business developement practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

**.2** AIA Document A101™–2017, Exhibit A, Insurance and Bonds

**.3** AIA Document A201™–2017, General Conditions of the Contract for Construction

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2020

**.5** Drawings

| Number | Title | Date |
|---|---|---|

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

*(Paragraphs Deleted)*

EXH-B Project Charter


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*(Paragraph Deleted)*

EXH-C Owner Insurance
EXH-D Project Schedule

*(Paragraph Deleted)*

*(Table Deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

.9 Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

This Agreement entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| *(Printed name and title)* | HANS SIEFKER / PRINCIPAL<br>*(Printed name and title)* |

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# *Additions and Deletions Report for*
## *AIA® Document A101® – 2017*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the Twenty day of February in the year 2024

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

...

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing
Flooring replacement at Olson Middle School, Hale School and Windom School.

...

Miller Dunwiddie
100 Washington Avenue South
Suite 500
Minneapolis, MN 55401

**PAGE 2**

[ X ] A date set forth in a notice to proceed issued by the Owner.

...

**§ 3.3.1** ~~Subject to adjustments of the Contract Time as provided in the Contract Documents, the~~ The Contractor shall achieve Substantial Completion of the entire Work:

**PAGE 3**

[ X ] By the following date: Defined in EXH-D Project Schedule

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...

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following ~~dates:~~dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

...

~~**Portion of Work** **Substantial Completion Date**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be ($ ),~~ Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** Alternates, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

~~**Item** **Price**~~

...

**§ 4.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

...

~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

...

~~**Item** **Price** **Conditions for Acceptance**~~

...

**§ 4.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

~~*(Identify each allowance.)*~~

...

~~**Item** **Price**~~

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...

**§ 4.4** Unit prices, if ~~any:~~any are defined in EXH-B Project Charter.

...

~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

...

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

...

**§ 4.5** Liquidated ~~damages, if any:~~damages

**PAGE 4**

~~*(Insert terms and conditions for liquidateddamages, if any.)*~~*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

...

damages for delay (but not as penalty), Contractor shall pay Owner $1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the

...

Owner.

...

~~**§ 4.6** Other:~~

...

~~*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*~~*After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner $1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

...

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~month.

...

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**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Architect~~not later than the - day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the - day of the - month. If an Application for Payment is received by the Architect after the application date fixed above,~~ , payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

...

~~*(Federal, state or local laws may require payment within a certain period of time.)*~~

...

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**PAGE 5**

~~*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*~~

...

5% (five percent)

...

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

...

~~*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work asprovided in Section 3.3.2, insert provisions for such modifications.)*~~*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*

...

~~**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect

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and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

~~*(Insert any other conditions for release of retainage upon Substantial Completion.)*~~

...

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the ~~site.~~site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

**PAGE 6**

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

...

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ 45 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~

...

Payment.

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

...

~~*(Insert rate*~~

...

**§ 5.4 Prompt Payment to Subcontractors**

...

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of ~~interest agreed upon, if any.)~~payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party

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requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document ~~A201–2017, unless~~ A201–2017.

...

**§ 6.1.1 Mediation**

...

~~the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.~~Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

...

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

...

~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~*If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor mayrequest Binding Dispute Resolution.*

...

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

**PAGE 7**

[ **X** ] Litigation in a court of competent jurisdiction

...

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

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...

Diedra Geye
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Joe Weatherly
Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

**PAGE 8**

Owner prohibits Contractor from using the Work in any marketing material or business developement practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2020

...

~~*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*~~

...

~~[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:~~

...

EXH-B Project Charter

**PAGE 9**

~~(Insert the date of the E204-2017 incorporated into this Agreement.)~~

...

EXH-C Owner Insurance

...

EXH-D Project Schedule

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...

~~[ ~ ] The Sustainability Plan:~~

...

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

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# AIA® Document A101® – 2017 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty day of February in the year 2024
*(In words, indicate day, month and year.)*

for the following **PROJECT**:
*(Name and location or address)*

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing
Flooring replacement at Olson Middle School, Hale School and Windom School.

**THE OWNER:**
*(Name, legal status and address)*

Minneapolis Public Schools
Special School District No. 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status and address)*

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

### ARTICLE A.2 OWNER'S INSURANCE

**§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.




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**§ A.2.2 Liability Insurance**
The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**§ A.2.3 Required Property Insurance**
**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.


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*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined is ECH-C Owner Insurance, providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

**.2** personal injury and advertising injury;


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.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and
.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
.3 Claims for bodily injury other than to employees of the insured.
.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
.8 Claims related to roofing, if the Work involves roofing.
.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
.10 Claims related to earth subsidence or movement, where the Work involves such hazards.
.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance .

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance .

*(Paragraph deleted)*

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance .

.

*(Paragraphs deleted)*

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The


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Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1 as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | Full contract value |
| Performance Bond | Full contract value |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*
## *AIA® Document A101® – 2017 Exhibit A*

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**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty day of February in the year 2024

...

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing
Flooring replacement at Olson Middle School, Hale School and Windom School.

...

Minneapolis Public Schools
Special School District No. 1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

**PAGE 4**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined is ECH-C Owner Insurance, providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance .

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

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**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance .

~~**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits ~~of not less than ($ ) per claim and ($ ) in the aggregate.~~as defined in EXH-C Owner Insurance .

.

~~**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits ~~of not less than ($ ) per claim and ($ ) in the aggregate.~~as defined in EXH-C Owner Insurance.
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If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section ~~A.3.3.1.~~
~~*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*~~A.3.3.1 as defined in EXH-C Owner Insurance.

~~[ – ] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*~~

~~[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for Work within fifty (50) feet of railroad property.~~

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[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | Full contract value |
| Performance Bond | Full contract value |

...

None

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# AIA® Document A201® – 2017

## *General Conditions of the Contract for Construction*

**for the following PROJECT:**
*(Name and location or address)*

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing
Flooring replacement at Olson Middle School, Hale School and Windom School.

**THE OWNER:**
*(Name, legal status and address)*

Minneapolis Public Schools Special School District 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE ARCHITECT:**
*(Name, legal status and address)*

Miller Dunwiddie
100 Washington Avenue South
Suite 500
Minneapolis, MN 55401

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11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS


**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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.


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15 CLAIMS AND DISPUTES

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.2 Correlation and Intent of the Contract Documents

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.


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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document


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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 Evidence of the Owner's Financial Arrangements

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.


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**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.


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**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.


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**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 Warranty

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.


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### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and


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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will


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specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.


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### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.


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**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.


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## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.


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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.


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**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

### § 7.3 Construction Change Directives

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:


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.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.


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**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### § 8.2 Progress and Completion

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 Delays and Extensions of Time

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.


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**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

### § 9.4 Certificates for Payment

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### § 9.5 Decisions to Withhold Certification

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;


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.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.


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### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.


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**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to


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.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**
**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will


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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act


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or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**


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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

**§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

**§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

**§ 12.2 Correction of Work**

**§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.


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**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and


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approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.


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**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- **.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.


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**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.


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**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.


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**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.


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**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.


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# *Additions and Deletions Report for*

## *AIA® Document A201® – 2017*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing
Flooring replacement at Olson Middle School, Hale School and Windom School.

...

Minneapolis Public Schools Special School District 1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Miller Dunwiddie
100 Washington Avenue South
Suite 500
Minneapolis, MN 55401

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:53:57 CT on 02/20/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

2/20/2024

*(Dated)*

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# Exhibit B - Project Charter

## Project Name and Number:

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing
Official Publication No. 24-2413

## Contractor:

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

## Description:

To furnish all labor, materials, equipment, and incidentals to complete all work for FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing project, in accordance with Drawings and Specifications prepared by:

Miller Dunwiddie, 100 Washington Avenue South, Suite 500, Minneapolis, MN 55401

| | |
|---|---|
| Article 9.5 Drawings: | December 31, 2023 |
| 9.6 Specifications dated: | December 31, 2023 |
| 9.7 Addenda dated: | Addendum #1 dated 1/17/2024 and Addendum #2 1/23/2024 |

## Contract Sum:

The total contract sum shall be: **$ 144,000.00**

## Alternates:

| Item | Price | Status |
|---|---|---|
| None | | |

## Conditions:

| Item | Price | Conditions for Acceptance |
|---|---|---|
| None | $ - | |
| | | |

## Allowances:

| Item | Price | Status |
|---|---|---|
| None | $ - | |
| | $ - | |

## Unit Prices:

| Item | Price per Unit | Units & Limitations |
|---|---|---|
| No.1 Add/Subtract 3" metal sleeve removal and patching | $ 595.00 | per Unit |
| No.2 Add/Subtract 8" metal sleeve removal and patching | $ 650.00 | per Unit |
| No.3 Add/Subtract 3" equipment area removal and patching | $ 625.00 | per Unit |
| No.4 Add/Subtract electrical box removal and patching | $ 1,570.00 | per Unit |
| No.5 Add/Subtract stripping 16'x16' four square court | $ 890.00 | per Unit |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## Project Name and Number

MPS Project Number: 24MULTI004

FY24 Flooring Replacement-Bid Package #1 Wood Floor Refinishing

OP#:24-2413

## Description

Flooring replacement at Olson Middle School, Hale School and Windom School

## Schedule

Last Day of School: June 14, 2024

Last Day for Staff: June 17, 2024

Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)

MPS Furniture Movers:  Week of June 17, 2024

Construction Commences: June 24, 2024

Final Cleaned:  August 16, 2024

Substantial Completion: August 16, 2024

MPS Staff back in Building:  August 19, 2024

MPS Furniture Movers:  Week of August 19, 2024

Final Completion: August 30, 2024

First day of School:  September 3, 2024

Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on or before August 16, 2024.

# FY24 Flooring Replacement-Bid Package #2 New Flooring

## Contract Sum: $197,900

## Contractor: Greiner Construction, Inc.

## Project Name and Number

FY24 Flooring Replacement-Bid Package #2 New Flooring
Minneapolis Public Schools Project Number 24MULTI004
Official Publication No. 24-2414

## Description

Flooring replacement at Jenny Lind School and Roosevelt High School

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $109,400 | Accepted |
| **Add Alternate No. 1 Jenny Lind Rooms 201, 204 & 206** | $33,400.00 | Accepted |
| **Add Alternate No. 2 Jenny Lind Rooms 113 & 121C** | $9,100.00 | Accepted |
| **Add Alternate No. 3 Jenny Lind Rooms 121A & 121B** | $6,400.00 | Accepted |
| **Add Alternate No. 4 Jenny Lind Rooms 212, 214, 216 & 218** | $39,600.00 | Accepted |

## Contract Documents

AIA Document A101-2017
AIA Document A101 Exhibit A-2017
Exhibit B – Project Charter
Exhibit C – Project Schedule
AIA Document E203-2013
AIA Document A201-2017

# AIA® Document A101® – 2017

## *Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum*

**AGREEMENT** made as of the Twenty day of February in the year 2024
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address and other information)*

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

for the following Project:
*(Name, location and detailed description)*

FY24 Flooring Replacement-Bid Package #2 New Flooring
Flooring replacement at Jenny Lind Elementary School and Roosevelt High School.

The Architect:
*(Name, legal status, address and other information)*

Miller Dunwiddie
100 Washington Avenue South
Suite 500
Minneapolis, MN 55401

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion**

**§ 3.3.1** The Contractor shall achieve Substantial Completion of the entire Work:
*(Check one of the following boxes and complete the necessary information.)*


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[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ X ] By the following date: Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table Deleted)*

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

## ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

### § 4.2 Alternates

**§ 4.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Table Deleted)*

**§ 4.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.5** Liquidated damages


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*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*
damages for delay (but not as penalty), Contractor shall pay Owner $1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the
Owner.

*(Paragraph Deleted)*

*After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner $1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the
month.

**§ 5.1.3** When an Application for Payment is received by the Architect, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

*(Paragraph Deleted)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- **.1** That portion of the Contract Sum properly allocable to completed Work;
- **.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- **.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:


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.1 The aggregate of any amounts previously paid by the Owner;
.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
.5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Paragraph Deleted)*

5% (five percent)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*
determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

*(Paragraph Deleted)*

**§ 5.1.8** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

**§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when


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.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

**§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.
*(Paragraph Deleted)*

**§ 5.4 Prompt Payment to Subcontractors**

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

## ARTICLE 6 DISPUTE RESOLUTION

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017.

**§ 6.1.1 Mediation**

Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

*If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor mayrequest Binding Dispute Resolution.*

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:


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*(Check the appropriate box.)*

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[ X ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Diedra Geye
1250 West Broadway Avenue
Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:
*(Name, address, email address, and other information)*

Joe Weatherly
Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.


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**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.7** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business developement practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

**.2** AIA Document A101™–2017, Exhibit A, Insurance and Bonds

**.3** AIA Document A201™–2017, General Conditions of the Contract for Construction

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2020

**.5** Drawings

| Number | Title | Date |
|---|---|---|

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

*(Paragraphs Deleted)*

EXH-B Project Charter


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*(Paragraph Deleted)*

EXH-C Owner Insurance
EXH-D Project Schedule

*(Paragraph Deleted)*

*(Table Deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

.9 Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

This Agreement entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| *(Printed name and title)* | HANS SIEKER / PRINCIPAL<br>*(Printed name and title)* |

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# *Additions and Deletions Report for*
## *AIA® Document A101® – 2017*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the Twenty day of February in the year 2024

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

...

FY24 Flooring Replacement-Bid Package #2 New Flooring
Flooring replacement at Jenny Lind Elementary School and Roosevelt High School.

...

Miller Dunwiddie
100 Washington Avenue South
Suite 500
Minneapolis, MN 55401

**PAGE 2**

[ X ] A date set forth in a notice to proceed issued by the Owner.

...

**§ 3.3.1** ~~Subject to adjustments of the Contract Time as provided in the Contract Documents, the~~ The Contractor shall achieve Substantial Completion of the entire Work:

**PAGE 3**

[ X ] By the following date: Defined in EXH-D Project Schedule

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...

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following ~~dates:~~dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

...

~~**Portion of Work** **Substantial Completion Date**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be ($ ),~~ Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** Alternates, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

~~**Item** **Price**~~

...

**§ 4.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

...

~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

...

~~**Item** **Price** **Conditions for Acceptance**~~

...

**§ 4.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

~~*(Identify each allowance.)*~~

...

~~**Item** **Price**~~

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...

**§ 4.4** Unit prices, if ~~any:~~any are defined in EXH-B Project Charter.

...

~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

...

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

...

**§ 4.5** Liquidated ~~damages, if any:~~damages

**PAGE 4**

~~*(Insert terms and conditions for liquidateddamages, if any.)*~~*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

...

damages for delay (but not as penalty), Contractor shall pay Owner $1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the

...

Owner.

...

~~**§ 4.6** Other:~~

...

~~*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*~~*After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner $1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

...

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~

...

month.

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...

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Architect~~not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above,~~ , payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

...

~~*(Federal, state or local laws may require payment within a certain period of time.)*~~

...

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**PAGE 5**

~~*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*~~

...

5% (five percent)

...

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

...

~~*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work asprovided in Section 3.3.2, insert provisions for such modifications.)*~~*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*

...

~~**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include~~

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~~retainage as follows:~~determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

~~*(Insert any other conditions for release of retainage upon Substantial Completion.)*~~

...

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the ~~site.~~site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

**PAGE 6**

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

...

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ 45 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~Payment.

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

...

~~*(Insert rate*~~

...

**§ 5.4 Prompt Payment to Subcontractors**

...

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of ~~interest agreed upon, if any.)~~payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for

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an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document ~~A201–2017, unless~~ A201–2017.

...

**§ 6.1.1 Mediation**

...

~~the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.~~Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

...

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

...

~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~*If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor mayrequest Binding Dispute Resolution.*

...

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

**PAGE 7**

[ **X** ] Litigation in a court of competent jurisdiction

...

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

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...

Diedra Geye
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Joe Weatherly
Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

**PAGE 8**

Owner prohibits Contractor from using the Work in any marketing material or business developement practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2020

...

~~*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*~~

...

~~[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:~~

...

EXH-B Project Charter

**PAGE 9**

~~(Insert the date of the E204-2017 incorporated into this Agreement.)~~

...

EXH-C Owner Insurance

...

EXH-D Project Schedule

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...

~~[ ] The Sustainability Plan:~~

...

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

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# AIA® Document A101® – 2017 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty day of February in the year 2024
*(In words, indicate day, month and year.)*

for the following **PROJECT**:
*(Name and location or address)*

FY24 Flooring Replacement-Bid Package #2 New Flooring
Flooring replacement at Jenny Lind Elementary School and Roosevelt High School.

**THE OWNER:**
*(Name, legal status and address)*

Minneapolis Public Schools
Special School District No. 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status and address)*

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ARTICLE A.1 GENERAL**

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

**ARTICLE A.2 OWNER'S INSURANCE**

**§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.


Init.
/

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**§ A.2.2 Liability Insurance**
The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**§ A.2.3 Required Property Insurance**
**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.


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*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined is ECH-C Owner Insurance, providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

**.2** personal injury and advertising injury;


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.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and
.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
.3 Claims for bodily injury other than to employees of the insured.
.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
.8 Claims related to roofing, if the Work involves roofing.
.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
.10 Claims related to earth subsidence or movement, where the Work involves such hazards.
.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance .

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance .

*(Paragraph deleted)*

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance .

.

*(Paragraphs deleted)*

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The


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Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1 as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*
**§ A.3.4 Performance Bond and Payment Bond**
The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | Full contract value |
| Performance Bond | Full contract value |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**
Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*
## *AIA® Document A101® – 2017 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty day of February in the year 2024

...

FY24 Flooring Replacement-Bid Package #2 New Flooring
Flooring replacement at Jenny Lind Elementary School and Roosevelt High School.

...

*(Name, legal status and address)*

Minneapolis Public Schools
Special School District No. 1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

**PAGE 4**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined is ECH-C Owner Insurance, providing coverage for claims including

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**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance .

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

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**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance .

~~**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits ~~of not less than ($ ) per claim and ($ ) in the aggregate.~~as defined in EXH-C Owner Insurance .

.

~~**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits ~~of not less than ($ ) per claim and ($ ) in the aggregate.~~as defined in EXH-C Owner Insurance.
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If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section ~~A.3.3.1.~~
~~*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*~~A.3.3.1 as defined in EXH-C Owner Insurance.

~~[ ] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*~~

~~[ ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for Work within fifty (50) feet of railroad property.~~

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[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | Full contract value |
| Performance Bond | Full contract value |

...

None

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# AIA® Document A201® – 2017

## *General Conditions of the Contract for Construction*

**for the following PROJECT:**
*(Name and location or address)*

FY24 Flooring Replacement-Bid Package #2 New Flooring
Flooring replacement at Jenny Lind Elementary School and Roosevelt High School.

**THE OWNER:**
*(Name, legal status and address)*

Minneapolis Public Schools Special School District 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE ARCHITECT:**
*(Name, legal status and address)*

Miller Dunwiddie
100 Washington Avenue South
Suite 500
Minneapolis, MN 55401

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.


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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.2 Correlation and Intent of the Contract Documents

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.


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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document


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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 Evidence of the Owner's Financial Arrangements

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.


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**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.


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**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.


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**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 Warranty

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.


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### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and


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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will


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specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.


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### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.


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**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.


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## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.


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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.


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**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

### § 7.3 Construction Change Directives

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:


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.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.


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**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

**§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

**§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

**§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.


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**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

### § 9.4 Certificates for Payment

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### § 9.5 Decisions to Withhold Certification

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;


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.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.


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### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.


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**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to


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.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**
**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will


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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act


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or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**


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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

**§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

**§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

**§ 12.2 Correction of Work**

**§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.


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**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and


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approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.


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**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- **.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.


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**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.


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**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.


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**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.


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**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.


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## *AIA® Document A201® – 2017*

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**PAGE 1**

FY24 Flooring Replacement-Bid Package #2 New Flooring
Flooring replacement at Jenny Lind Elementary School and Roosevelt High School.

...

Minneapolis Public Schools Special School District 1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Miller Dunwiddie
100 Washington Avenue South
Suite 500
Minneapolis, MN 55401

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:04:04 CT on 02/20/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

2/20/2024

*(Dated)*

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# Exhibit B - Project Charter

## Project Name and Number:

FY24 Flooring Replacement-Bid Package #2 New Flooring
Official Publication No. 24-2414

## Contractor:

Greiner Construction, Inc.
121 South 8th Street, Suite 1200
Minneapolis, MN 55402

## Description:

To furnish all labor, materials, equipment, and incidentals to complete all work for FY24 Flooring Replacement-Bid Package #2 New Flooring project, in accordance with Drawings and Specifications prepared by:
Miller Dunwiddie, 100 Washington Avenue South, Suite 500, Minneapolis, MN 55401

| | |
|---|---|
| Article 9.5 Drawings: | December 31, 2023 |
| 9.6 Specifications dated: | December 31, 2023 |
| 9.7 Addenda dated: | Addendum #1 dated 1/17/2024 |

## Contract Sum:

The total contract sum shall be: **$ 197,900.00**

## Alternates:

| Item | Price | Status |
|---|---|---|
| Add Alternate No. 1 Jenny Lind Rooms 201, 204 & 206 | $ 33,400.00 | Accepted |
| Add Alternate No. 2 Jenny Lind Rooms 113 & 121C | $ 9,100.00 | Accepted |
| Add Alternate No. 3 Jenny Lind Rooms 121A & 121B | $ 6,400.00 | Accepted |
| Add Alternate No. 4 Jenny Lind Rooms 212, 214, 216 & 218 | $ 39,600.00 | Accepted |

## Conditions:

| Item | Price | Conditions for Acceptance |
|---|---|---|
| None | $ - | |
| | | |

## Allowances:

| Item | Price | Status |
|---|---|---|
| None | $ - | |
| | $ - | |

## Unit Prices:

| Item | Price per Unit | Units & Limitations |
|---|---|---|
| None | | |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## Project Name and Number

MPS Project Number: 24MULTI004

FY24 Flooring Replacement-Bid Package #2 New Flooring

OP#:24-2414

## Description

Flooring replacement at Jenny Lind Elementary School and Roosevelt High School

## Schedule

Last Day of School: June 14, 2024

Last Day for Staff: June 17, 2024

Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)

MPS Furniture Movers: Week of June 17, 2024

Construction Commences: June 24, 2024

Final Cleaned: August 16, 2024

Substantial Completion: August 16, 2024

MPS Staff back in Building: August 19, 2024

MPS Furniture Movers: Week of August 19, 2024

Final Completion: August 30, 2024

First day of School: September 3, 2024

Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on or before August 16, 2024.

# FY21 North High School Phase 3

## Contract Sum: $1,116,500

## Contractor: Horizon Equipment, LLC

## Project Name and Number

North High School Phase 3 Work Scope 11F Food Service Equipment
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $1,116,500 | accepted |
| **Alt #1: Toilets D140 & D240** | $0 | rejected |
| **Alt #2: Toilets D106 & D206** | $0 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $0 | rejected |
| **Alt #4: Auditorium Seating** | $0 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Horizon Equipment, LLC
1960 Seneca Road
Eagan, MN 55122

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 11F Food Service Equipment
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.


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**TABLE OF ARTICLES**


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EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK


## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.




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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be one million, one hundred sixteen thousand, five hundred dollars ($ 1,116,500 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

#### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

**.5** Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**
**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**
**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and
**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**
**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
**.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

**ARTICLE 6 DISPUTE RESOLUTION**
**§ 6.1 Initial Decision Maker**
The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:


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*(Name, address, email address, and other information)*

Andrew Youngquist
Controller
Horizon Equipment, LLC
1960 Seneca Road
Eagan, MN 55122

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**.2** AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

**.3** AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2023

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*
*(Table deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors bid documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | Andrew Youngquist Controller |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 06:59:21 CT on 01/31/2024.

**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Horizon Equipment, LLC
1960 Seneca Road
Eagan, MN 55122

...

North High School Phase 3 Work Scope 11F Food Service Equipment
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ – ] Not later than ( – ) calendar days from the date of commencement of the Work.~~

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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~~[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

~~[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*~~
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be one million, one hundred sixteen thousand, five hundred dollars ($ 1,116,500 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract ~~Sum:~~
Sum are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Price~~ |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if ~~any:~~
~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~any are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

**§ 4.3** ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
~~**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~**§ 4.3.2** The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Andrew Youngquist
Controller
Horizon Equipment, LLC
1960 Seneca Road
Eagan, MN 55122

...

**§ 8.5** ~~Insurance and Bonds~~**Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2023

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

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|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule

[ ] ~~AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ – ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors bid documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 06:59:21 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/31/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____ day of ___January_____ in the year __2024____
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 11F Food Service Equipment
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

Horizon Equipment, LLC 1960 Seneca Road
Eagan, MN 55122

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions

### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

### ARTICLE A.2 OWNER'S INSURANCE

#### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.



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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
**.2** personal injury and advertising injury;
**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
**.4** bodily injury or property damage arising out of completed operations; and


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**.5** the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

**.1** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

**.2** Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

**.3** Claims for bodily injury other than to employees of the insured.

**.4** Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

**.5** Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

**.6** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

**.7** Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

**.8** Claims related to roofing, if the Work involves roofing.

**.9** Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

**.10** Claims related to earth subsidence or movement, where the Work involves such hazards.

**.11** Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*


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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $1,116,500 |
| Performance Bond | $1,116,500 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*
## *AIA® Document A132® – 2019 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 07:00:33 CT on 01/31/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____day of ___January_____in the year __2024____

...

North High School Phase 3 Work Scope 11F Food Service Equipment
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Horizon Equipment, LLC 1960 Seneca Road
Eagan, MN 55122

**PAGE 2**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**PAGE 4**

**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.9** ~~If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.10** ~~Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.11** ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.12** ~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**PAGE 6**

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ – ] **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $1,116,500 |
| Performance Bond | $1,116,500 |

...

None

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# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 11F Food Service Equipment

This work scope includes all food service equipment for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $1,116,500

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $0 | Rejected |
| **Alt#2: Toilets D106 & D206** | $0 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $0 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 11F Food Service Equipment

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School:  September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on the dates provided above.

# FY21 North High School Phase 3

## Contract Sum: $285,840

## Contractor: H2I Group

## Project Name and Number

North High School Phase 3 Work Scope 12J Theater Seating
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $0 | accepted |
| **Alt #1: Toilets D140 & D240** | $0 | rejected |
| **Alt #2: Toilets D106 & D206** | $0 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $0 | rejected |
| **Alt #4: Auditorium Seating** | $285,840 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

H2I Group
430 Industrial Blvd.
Minneapolis, MN 55413

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 12J Theater Seating
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.
/
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**User Notes:** (1501119318)

**TABLE OF ARTICLES**


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9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK


## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.




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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be Two hundred, eighty-five thousand, eight hundred forty dollars ($ 285,840 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

**.5** Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**

**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**

**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**

**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

**.2** the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and

**.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:


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*(Name, address, email address, and other information)*

Kyle Saewert
President
H2I Group
430 Industrial Blvd.
Minneapolis, MN 55413

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**.2** AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

**.3** AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|
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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*
*(Table deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors bid documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | Kyle Saewert, President |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:36:33 CT on 01/31/2024.

**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

H2I Group
430 Industrial Blvd.
Minneapolis, MN 55413

...

North High School Phase 3 Work Scope 12J Theater Seating
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ – ] Not later than ( ) calendar days from the date of commencement of the Work.~~

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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~~[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

~~[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*~~
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be Two hundred, eighty-five thousand, eight hundred forty dollars ($ 285,840 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract ~~Sum:~~
Sum are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Price~~ |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if ~~any:~~
~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~any are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

**§ 4.3** ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
~~**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~**§ 4.3.2** The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Kyle Saewert
President
H2I Group
430 Industrial Blvd.
Minneapolis, MN 55413

...

**§ 8.5 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule

[ ] ~~AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ – ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors bid documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:36:33 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/31/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____ day of ___January_____ in the year __2024____
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 12J Theater Seating
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

H2I Group 430 Industrial Blvd..
Minneapolis, MN 55413

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions

### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

### ARTICLE A.2 OWNER'S INSURANCE

#### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.




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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
**.2** personal injury and advertising injury;
**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
**.4** bodily injury or property damage arising out of completed operations; and


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**.5** the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

**.1** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

**.2** Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

**.3** Claims for bodily injury other than to employees of the insured.

**.4** Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

**.5** Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

**.6** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

**.7** Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

**.8** Claims related to roofing, if the Work involves roofing.

**.9** Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

**.10** Claims related to earth subsidence or movement, where the Work involves such hazards.

**.11** Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*


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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $285,840 |
| Performance Bond | $285,840 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:27:25 CT on 01/31/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____day of ___January_____in the year __2024____

...

North High School Phase 3 Work Scope 12J Theater Seating
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

H2I Group 430 Industrial Blvd..
Minneapolis, MN 55413

**PAGE 2**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**PAGE 4**

**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.9** ~~If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.10** ~~Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.11** ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.12** ~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**PAGE 6**

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ – ] **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $285,840 |
| Performance Bond | $285,840 |

...

None

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# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 12J Theater Seating

This work scope includes theater seating for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $285,840 that includes the base bid and the selected alternates below.

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $0 | Rejected |
| **Alt#2: Toilets D106 & D206** | $0 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $0 | Rejected |
| **Alt#4: Auditorium Seating** | $285,840 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 12J Theater Seating

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School:  September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on the dates provided above.

# FY21 North High School Phase 3

## Contract Sum: $1,501,955

## Contractor: Kellington Construction

## Project Name and Number

North High School Phase 3 Work Scope 6A Carpentry
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $1,449,900 | accepted |
| **Alt #1: Toilets D140 & D240** | $149,455 | rejected |
| **Alt #2: Toilets D106 & D206** | $149,455 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $130,750 | rejected |
| **Alt #4: Auditorium Seating** | $52,055 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Kellington Construction, Inc
807 Broadways St. NE Ste 185
Minneapolis, MN 55413

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 6A Carpentry
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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**User Notes:**
(725898807)

TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

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5 PAYMENTS

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8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*

**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

## ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

**§ 4.2 Stipulated Sum**

**§ 4.2.1** The Contract Sum shall be one million, five hundred one thousand, nine hundred fifty-five dollars ($ 1,501,955 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**

**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*

**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*

**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

.5 Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**

**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**

**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and

.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**

**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

## ARTICLE 6 DISPUTE RESOLUTION

**§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation
The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**
For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**
**§ 7.1 Where the Contract Sum is a Stipulated Sum**
**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*
**ARTICLE 8 MISCELLANEOUS PROVISIONS**
**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:

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*(Name, address, email address, and other information)*

Reed Lewis
CEO
Kellington Construction, Inc.
807 Broadway St. NE Ste. 185
Minneapolis, MN 55413

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

.1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

.2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

.3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

.5 Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 20, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

.6 Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30,2023 | 1565 |

.7 Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors bid documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Finance and Operations Officer | Reed Lewis, CEO |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*
## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 January

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Kellington Construction, Inc
807 Broadways St. NE Ste 185
Minneapolis, MN 55413

...

North High School Phase 3 Work Scope 6A Carpentry
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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§ 1.2 In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

§ 1.3 Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ X ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ ] Not later than ( ) calendar days from the date of commencement of the Work.~~

~~[ ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ ] Stipulated Sum, in accordance with Section 4.2 below~~

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[ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

[ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be one million, five hundred one thousand, nine hundred fifty-five dollars ($ 1,501,955 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract Sum:
Sum are defined in EXH-B Project Charter.

| Item | Price |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted below, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract Sum:Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if any:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)any are defined in EXH-B Project Charter.

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

**§ 4.3** Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum PriceAllowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

**§ 4.3.2** The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:

**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

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§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.

§ 4.3.6 Unit prices, if any:
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum PriceUnit prices, if any, are defined in EXH-B Project Charter.
§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.4.2 The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

§ 4.4.7 Guaranteed Maximum Price
§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 4.4.7.2 Alternates
§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

| Item | Price |
|---|---|

§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:
*(Identify each allowance.)*

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.



**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232-2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~.1 The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~.2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~.3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~.1 The aggregate of any amounts previously paid by the Owner;~~
- ~~.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Retainage withheld pursuant to Section 5.1.7.~~

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~~§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

~~§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~

~~§ 5.1.5.6 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.~~

~~§ 5.1.5.7 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.~~

~~**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**~~

~~§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.~~

~~§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.~~

~~§ 5.1.6.2.1 The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

~~§ 5.1.6.2.2 The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.~~

~~§ 5.1.6.2.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.~~

~~§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ 5.1.6.4 In accordance with AIA Document A232-2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~§ 5.1.6.4.1 The amount of each progress payment shall first include:~~

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.



[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~
~~**§ 7.2.1 Termination**~~
~~§ 7.2.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~
~~§ 7.2.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

~~.1 Take the Cost of the Work incurred by the Contractor to the date of termination;~~
~~.2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
~~.3 Subtract the aggregate of previous payments made by the Owner; and~~
~~.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~§ 7.2.1.2.2 When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232–2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~§ 7.2.1.2.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~
~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~
~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Reed Lewis
CEO
Kellington Construction, Inc.
807 Broadway St. NE Ste. 185
Minneapolis, MN 55413

...

**§ 8.5 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 20, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30,2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

~~*[ ] AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work*~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors bid documents

...

Ibrahima Diop Sr. Finance and Operations Officer

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# AIA® Document E203® – 2013

## *Building Information Modeling and Digital Data Exhibit*

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
*(Name and location or address of the Project)*

North High School Phase 3 Renovations
1500 James Avenue, Minneapolis. MN 55411

**TABLE OF ARTICLES**


1 GENERAL PROVISIONS

2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

3 DIGITAL DATA PROTOCOLS

4 BUILDING INFORMATION MODELING PROTOCOLS

5 OTHER TERMS AND CONDITIONS


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

### ARTICLE 1 GENERAL PROVISIONS

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project,.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

**§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.


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**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:
*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

**§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

**ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**

**§ 2.1** The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital


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Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows:
*(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| Anticipated Digital Data | Applicability to the Project *(Indicate Applicable or Not Applicable)* | Location of Detailed Description *(Section 3.1.1 below or in an attachment to this exhibit and identified below)* |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*

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§ 3.2.3 The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

§ 3.3 The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

**§ 3.4 Unauthorized Use**

**§ 3.4.1 Prior to Establishment of Digital Data Protocols**

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 3.4.2 Following Establishment of Digital Data Protocols**

Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

**§ 3.5 Digital Data Management**

**§ 3.5.1** Centralized electronic document management system use on the Project shall be:
*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

[ ] The Parties do not intend to use a centralized electronic document management system on the Project.

§ 3.5.2 If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

§ 3.5.3 Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.
*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

| Responsible Project Participant | Project Milestone |
|---|---|
| Contractor | Project Construction begins |

## ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

§ 4.1 If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:


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[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

**§ 4.2 Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

| **Project Portion for Modeling** | **Responsible Project Participant** |
|---|---|
| Project design | Architect |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.
*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**§ 4.5 Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

**§ 4.5.1** The Modeling protocols shall address the following:

.1 Identification of the Model Element Authors;
.2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
.3 Identification of the required LOD of each Model Element at each identified Project milestone;
.4 Identification of the construction classification systems to be used on the Project;
.5 The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
.6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
.7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
.8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
.9 Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

None

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*(Paragraph deleted)*
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**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

**§ 4.7 Unauthorized Use**

**§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

**§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

| Responsible Project Participant | Project Milestone |
|---|---|

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- **.1** Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
- **.2** Model file storage location(s)
- **.3** Processes for transferring and accessing Model files
- **.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.
- **.5** Processes for aggregating Model files from varying software platforms
- **.6** Model access rights
- **.7** Identification of design coordination and clash detection procedures.
- **.8** Model security requirements
- **.9** Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- **.1** Collect incoming Models:
  - **.1** Coordinate submission and exchange of Models
  - **.2** Create and maintain a log of Models received


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.3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
.4 Maintain a record copy of each Model file received

.2 Aggregate Model files and make them available for Authorized Uses
.3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
.4 Manage Model access rights
.5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and AutoCAD

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model | Applicability to Project *(Applicable or Not Applicable)* | Responsible Project Participant | Location of Detailed Description of Requirements and Services *(Section 4.10 below or in an attachment to this exhibit and identified below)* |
|---|---|---|---|
| § 4.9.1 Remodeling | Applicable | Owner | |
| § 4.9.2 Wayfinding and Mapping | Applicable | Architect | |
| § 4.9.3 Asset/FF & E Management | Applicable | Owner | |
| § 4.9.4 Energy Management | Applicable | Owner | |
| § 4.9.5 Space Management | Applicable | Owner | |
| § 4.9.6 Maintenance Management | Applicable | Owner | |
| | | | |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

## ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.


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# *Additions and Deletions Report for*
## *AIA® Document E203® – 2013*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:25:23 CT on 01/31/2024.

**PAGE 1**

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

North High School Phase 3 Renovations
1500 James Avenue, Minneapolis, MN 55411

...

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the ~~Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.~~ Project,.

...

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**PAGE 2**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~ .

...

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~3.

**PAGE 3**

| | | |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |

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| | | |
|---|---|---|
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

~~**§ 3.2.2** The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.~~

**§** .

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data ~~protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.~~ protocols.

...

Following agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

...

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth ~~in the latest version of G201–2013 approved~~ d by the Project Participants.

...

Contractor Project Construction begins

**PAGE 5**

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design Architect

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**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project ~~Participants and further described for each LOD in AIA Document G202–2013.~~

Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

...

None

~~**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.~~

**§** .

**PAGE 6**

Following agreement to, and documentation of, the Modeling ~~protocols in AIA Document G202–2013,~~ protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

.1 Model origin point, coordinate system, precision, file formats and ~~units~~units. The model shall be accurately geo-located to agreed-upon reference datum

...

.4 Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**PAGE 7**

Transmit to MPS the model in PDF, Revit and AutoCAD

...

| | | | | |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |

...

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As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:25:23 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/31/2024

*(Dated)*

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MINNEAPOLIS PUBLIC SCHOOLS

# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 6A Carpentry

This work scope includes all carepentry work for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $1,501,955. This includes the base bid of $1,449,900 and the accepted alternates below

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $149,455 | Rejected |
| **Alt#2: Toilets D106 & D206** | $149,455 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $130,750 | Rejected |
| **Alt#4: Auditorium Seating** | $52,055 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE

   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals) N/A ?

i. Per Claim $2,000,000

For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used) N/A

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

f. Property Insurance

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders "all risk" Insurance

i. Per Claim $2,000,000

ii. Aggregate $4,000,000

This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

i. Aggregate limit $5,000,000

This insurance is required only for projects larger than $10,000,000 in total construction costs.

MINNEAPOLIS PUBLIC SCHOOLS

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 6A Carpentry

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: n24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School: September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

## Substantial Completion

The Work will be substantially complete on the dates provided above.

# AIA® Document G802® – 2017

## *Amendment to the Professional Services Agreement*

**PROJECT:** *(name and address)*
North High School CTE Projects
1500 James Ave N
Minneapolis, MN 55411

**AGREEMENT INFORMATION:**
Date: January 28, 2021

**AMENDMENT INFORMATION:**
Amendment Number: 3
Date: 2.20.2024

**OWNER:** *(name and address)*
Minneapolis Public Schools
Special School District No. 1
1250 West Broadway Ave
Minneapolis, MN 55411

**ARCHITECT:** *(name and address)*
LSE Architects, Inc.
100 Portland Ave S, Suite 100
Minneapolis, MN 55401

The Owner and Architect amend the Agreement as follows:
Architectural, Civil, Structural, Theater, Mechanical, Electrical and Plumbing engineering and architecture for the renovation and addition to North High School and the North CTE Hub, Bid Packages 1-5. The amendment includes the re-packaging of Bid Package 3, into multiple packages, Bid Package 3 and 4. The amendment includes an increase in the Cost of Work from $69,241,428, to a current total of $73,029,732, comprised of the following:

| | |
|---|---|
| BP #1 | $23,525,000 |
| BP #2 | $23,600,000 |
| BP #3 | $12,800,011 |
| BP #4 | $13,104,721 estimated |
| Total Cost | $73,029,732 |

The Architect's compensation and schedule shall be adjusted as follows:

Compensation Adjustment:
The fee basis in the current contract and proposed adjustment

| | |
|---|---|
| Prior Construction Budget : | $66,687,487 |
| Prior Associated Fee based on 6.75% : | $4,501,405.39 |
| Prior Planning Fee: | $172,400 |
| Current Construction Budget: | $73,029,732 |
| Increase in Construction Cost: | $6,342,245 |
| Adjusted Contract fee based on 6.75%: | $428,102 |

Negotiated Fee:
Negotiated Adjusted Contract fee : $295,000

Schedule Adjustment:
The following milestones dates are adjustments to the schedule.
Bid Package 3 - Media Center Relocation, Kitchen, Servery, Childcare, Auditorium, Circulation and Restrooms – to begin construction April 2024 - August 2024
Bid Package 4 - Classroom Commons, Science, Art, Athleltic Offices – to begin construction March 2025 - August 2025

**SIGNATURES:**

LSE Architects, Inc.
**ARCHITECT** *(Firm name)*

Minneapolis Public Schools
**OWNER** *(Firm name)*

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| | |
|---|---|
| SIGNATURE | SIGNATURE |
| Quintin J. Scott, President | Ibrahima Diop, Sr. Officer of Finance and Operations |
| PRINTED NAME AND TITLE | PRINTED NAME AND TITLE |
| 02/28/2024 | |
| DATE | DATE |

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(3B9ADA4C)

# FY21 North High School Phase 3

## Contract Sum: $3,350,000

## Contractor: NAC Mechanical and Electrical Services

## Project Name and Number

North High School Phase 3 Work Scope 26A Electrical
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $1,980,000 | accepted |
| **Alt #1: Toilets D140 & D240** | $15,000 | rejected |
| **Alt #2: Toilets D106 & D206** | $15,000 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $98,000 | rejected |
| **Alt #4: Auditorium Seating** | $1,370,000 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

NAC Mechanical and Electrical Services
1001 Labore Industrial Court, Suite B
Vadnais Heights, MN 55110

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 26A Electrical
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.


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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be Three million, three hundred, fifty thousand dollars ($ 3,350,000 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed. ~~Waiver per email from KA dated 02.22.24 LJB~~

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

**.5** Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**
**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**
**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and
**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**
**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
**.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

**ARTICLE 6 DISPUTE RESOLUTION**
**§ 6.1 Initial Decision Maker**
The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:


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*(Name, address, email address, and other information)*

Dan Marvin
Vice President
NAC Mechanical and Electrical Services
1001 Labore Industrial Court, Suite B
Vadnais Heights, MN 55110

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**.2** AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

**.3** AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 24, 2023

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*
*(Table deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors bid documents
~~Liquidated Damages email per KA dated 02.22.24~~

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | Lynn Bishop, President |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

NAC Mechanical and Electrical Services
1001 Labore Industrial Court, Suite B
Vadnais Heights, MN 55110

...

North High School Phase 3 Work Scope 26A Electrical
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ – ] Not later than ( ) calendar days from the date of commencement of the Work.~~

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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~~[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

~~[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*~~
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be Three million, three hundred, fifty thousand dollars ($ 3,350,000 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract ~~Sum:~~
Sum are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Price~~ |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if ~~any:~~
~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~any are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

**§ 4.3** ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
~~**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~**§ 4.3.2** The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Dan Marvin
Vice President
NAC Mechanical and Electrical Services
1001 Labore Industrial Court, Suite B
Vadnais Heights, MN 55110

...

**§ 8.5** ~~Insurance and Bonds~~**Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 24, 2023

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule

[ ] ~~AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ – ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors bid documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:23:19 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/31/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____ day of ___January_____ in the year __2024____
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 26A Electrical
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

NAC Mechanical and Electrical Services 1001 Labore Industrial Court, Suite B
Vadnais Heights, MN 55110

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

### ARTICLE A.2 OWNER'S INSURANCE

#### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions



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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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**User Notes:** (1263748979)

[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
**.2** personal injury and advertising injury;
**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
**.4** bodily injury or property damage arising out of completed operations; and


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.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*


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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $3,350,000 |
| Performance Bond | $3,350,000 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:23:57 CT on 01/31/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____day of ___January_____in the year __2024____

...

North High School Phase 3 Work Scope 26A Electrical
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

NAC Mechanical and Electrical Services 1001 Labore Industrial Court, Suite B
Vadnais Heights, MN 55110

**PAGE 2**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**PAGE 4**

**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.9** ~~If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.10** ~~Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.11** ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.12** ~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**PAGE 6**

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ – ] **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $3,350,000 |
| Performance Bond | $3,350,000 |

...

None

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# AIA® Document A232® – 2019

## *General Conditions of the Contract for Construction,* *Construction Manager as Adviser Edition*

**for the following PROJECT:**
*(Name, and location or address)*

North High School Phase 3 Work Scope 26A Electrical
1500 James Avenue, Minneapolis, MN 55411

**THE CONSTRUCTION MANAGER:**
*(Name, legal status, and address)*

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE ARCHITECT:**
*(Name, legal status, and address)*

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.


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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.

**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**§ 1.1.3 The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

**§ 1.1.7 The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**§ 1.1.8 The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.9 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.


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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

**§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

**§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

**§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to


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whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

**§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

**§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

**§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

**§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court


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or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.4** If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

**§ 2.3.5** If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 2.3.7** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.3.8** The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants'


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additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

**§ 3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.


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**§ 3.2.2** The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

**§ 3.2.4** If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.6** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

**§ 3.3.5** The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.


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**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

**§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

**§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents


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and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices, and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager,


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determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of


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commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

### § 3.11 Documents and Samples at the Site

**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

### § 3.12 Shop Drawings, Product Data, and Samples

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review


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by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must


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satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction


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Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

## ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

**§ 4.1.3** Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's consultants (1) during construction; (2) until final payment is due; and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.


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**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.

**§ 4.2.3** The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

**§ 4.2.4** The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

**§ 4.2.5** The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

**§ 4.2.7** The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.


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**§ 4.2.9** Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

**§ 4.2.10** The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

**§ 4.2.11** The Architect will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.

**§ 4.2.12** Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.13** The Construction Manager will prepare Change Orders and Construction Change Directives.

**§ 4.2.14** The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.15** Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

**§ 4.2.16** The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

**§ 4.2.17** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.


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**§ 4.2.18** The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

*(Paragraph deleted)*

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written


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confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

**§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

**.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

**.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

**§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

**§ 6.1.3** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors


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shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not reasonably discoverable.

**§ 6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

**§ 6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or


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substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

**.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

**.2** For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

**.3** For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

**.4** For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

**.5** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

**.6** In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

**§ 7.2 Change Orders and Change Proposals**

**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

**.1** The change in the Work;

**.2** The amount of the adjustment, if any, in the Contract Sum; and

**.3** The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without


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invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

**.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

**.2** Unit prices stated in the Contract Documents or subsequently agreed upon;

**.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

**.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

**.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;

**.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);

**.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

**.5** Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on


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the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

### § 8.2 Progress and Completion

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.


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**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

**.1** Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

**.2** Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);

**.3** Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

**.4** Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

**.5** Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

**.1** Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

**.2** In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

**.3** Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

**.4** With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

**.5** Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the


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Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

**.6** No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

**.7** Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

### § 9.3 Applications for Payment

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.


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**§ 9.3.1.2** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

> "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

**§ 9.4 Certificates for Payment**

**§ 9.4.1** Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.


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**§ 9.4.2** Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 9.4.2.1** Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

**§ 9.4.3** The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.6** The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of


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.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor or other Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

**§ 9.6.3** The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.


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**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect then the Contractor may, upon ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up which shall be accomplished as provided in Article 7.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and when the Architect issues a Certificate of Substantial Completion.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.3** Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.


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**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents


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and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

### § 9.11 Damages for Delay

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the


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Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

**§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- **.4** construction or operations by the Owner, Separate Contractors, or other Contractors.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.


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**§ 10.3 Hazardous Materials**

**§ 10.3.1** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**.1** Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

**.2** The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

*(Paragraph deleted)*

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.


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**§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

**§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.


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**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors,


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Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Paragraph deleted)*

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

**§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.


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## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

**§ 12.1.1** If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby.

#### § 12.2.2 After Substantial Completion

*(Paragraphs deleted)*

**§ 12.2.2.1**If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.


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**§ 12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the


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Contractor shall give a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe procedures. The Owner shall bear such costs, except as provided in Section 13.4.3.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

**§ 13.4.5** If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.5 Interest**

All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.


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Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

**.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

**.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

**.3** Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

**.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.1.5 No Right to Stop Work for Non-Payment

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10)


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days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

**.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

**.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

**.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

**.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

**.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

**.2** Accept assignment of subcontracts pursuant to Section 5.4; and

**.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

**.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

**.2** that an equitable adjustment is made or denied under another provision of this Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

**.1** cease operations as directed by the Owner in the notice;

**.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

**.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

*(Paragraph deleted)*


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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

**§ 15.1.1 Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

**§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

**§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

**§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.


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*(Paragraphs deleted)*

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

*(Paragraphs deleted)*

**§ 15.3 Mediation**

**§ 15.3.1** Any claim, dispute or other matter in question or arising out of or related to the Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

*(Paragraphs deleted)*


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# *Additions and Deletions Report for*
## *AIA® Document A232® – 2019*

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**PAGE 1**

North High School Phase 3 Work Scope 26A Electrical
1500 James Avenue, Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

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**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The ~~Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

...

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the ~~indicated~~ intended results.

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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

...

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

...

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit,~~ Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol ~~Form,~~ Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or ~~authorization.~~ authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

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**§ 2.3.5** ~~The~~ If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~ Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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**§ 3.1.3** The Contractor shall ~~not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.~~hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

**§ 3.2.1** ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally~~ The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors,

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inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, ~~and correlated personal observations with requirements of the Contract Documents.~~has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

**§ 3.2.2** ~~Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The ~~Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.~~Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

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**§ 3.2.4** If the Contractor believes that ~~additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.6** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

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**§ 3.3.4** The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

**§ 3.3.5** The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

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**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

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**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

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**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

...

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume ~~appropriate~~ full responsibility for such Work and shall bear the ~~costs attributable~~

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~~to correction.~~attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ~~14~~ ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

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**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work.~~ Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

...

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

...

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

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**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

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~~The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

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**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

...

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and ~~approved by the Architect.~~accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with ~~approved~~ accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's ~~approval~~ acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written ~~approval~~ acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's ~~approval~~ acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's ~~approval~~ acceptance of a resubmission shall not apply to such revisions.

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**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such

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facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

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**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

...

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall ~~indemnify~~ indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

...

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

...

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's ~~representatives during construction until the date the Architect issues the final Certificate for Payment.~~ consultants (1) during construction; (2) until final payment is due; and (3) with the

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Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract ~~Documents.~~Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the ~~portion of the Work completed,~~ Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work ~~observed~~ is being performed in a manner indicating that the Work, when ~~fully~~ completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.
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**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the ~~Owner.~~ Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

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**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.
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**§ 4.2.11** The Architect ~~will~~ will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness~~ or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.
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**§ 4.2.18** The Architect will interpret and decide matters concerning performance ~~under, and~~ under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness.~~ with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** ~~Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.~~Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

~~**§ 4.2.21** The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

...

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

...

**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time~~ The Contract Sum shall be increased or decreased by the ~~difference, if any,~~ difference in cost occasioned by such change, and an appropriate Change Order shall be ~~issued before commencement of the substitute Subcontractor's Work.~~ issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

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**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

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~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

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**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not ~~apparent.~~reasonably discoverable.

**§ 6.2.3** ~~The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or~~

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~~defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.~~Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

...

**§ 6.2.5** ~~The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.~~Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

...

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and ~~rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.~~rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

...

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. ~~An order for a minor change in the Work may be issued by the Architect alone.~~

...

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

**.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

**.2** For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

**.3** For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

**.4** For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

**.5** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

**.6** In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

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**§ 7.2 Change Orders and Change Proposals**

~~A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:~~**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

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**.3** The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

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**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others;~~others (at rates approved by the Owner);

...

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective ~~immediately and shall be recorded as a Change Order.~~immediately.

...

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**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for ~~Payment.~~ Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in ~~writing.~~ writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

...

**§ 8.1.4** The term "day" ~~as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.~~shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract ~~Time.~~Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

**.1** Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

**.2** Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets

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back on schedule as established by the CPM Schedule Report (including any updates thereto);

.3 Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

.4 Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

.5 Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

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**§ 8.3.1** If the Contractor is delayed at any time in the ~~commencement or~~ progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5)~~ or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

.1 Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

.2 In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

.3 Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

.4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

.5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

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**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be~~ Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. ~~This~~ The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment ~~prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required,~~ for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and ~~suppliers, and shall reflect retainage if provided for in the Contract Documents.~~material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

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**§ 9.3.1.2** ~~Applications for Payment~~ Such applications shall not include requests for payment ~~for portions of the Work for which the~~ of amounts the Contractor does not intend to pay a Subcontractor ~~or supplier,~~ or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

"That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

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**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

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**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect ~~or awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven~~ ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and ~~start-up, plus interest as provided for in the Contract Documents.~~start-up which shall be accomplished as provided in Article 7.

...

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended ~~use.~~use and when the Architect issues a Certificate of Substantial Completion.

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**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or ~~corrected prior to final payment.~~ corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

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**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special

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warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6), if required by the Owner,~~ including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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**§ 9.11 Damages for Delay**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

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~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.~~**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

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If either party suffers injury or ~~damage~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ ten (10) days after ~~discovery.~~ first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.

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**§ 10.3.1** ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify~~ In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless,

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the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect ~~of the condition.~~in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**.1** Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

**.2** The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** ~~Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

**§ 10.3.4** ~~The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

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Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

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In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

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Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~** ~~Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

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**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

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**~~§ 11.3.2~~** ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

**…**

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**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall ~~deposit the insurance proceeds in a separate account and~~ make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

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The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary ~~thereby, shall be at the Contractor's expense.~~thereby.

...

~~**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.~~

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~~**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.~~

~~**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

**§ 12.2.2.1** If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.4** ~~The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.~~ If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.5** ~~Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.~~ The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public ~~authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice~~ authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for~~ observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely~~ a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for such procedures. Such~~ observe procedures. The Owner shall bear such costs, except as provided in Section ~~13.4.3, shall be at the Owner's expense.~~13.4.3.

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~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the

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Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

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**§ 14.1.5 No Right to Stop Work for Non-Payment**

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

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**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

...

~~**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

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**§ 15.1.1 Definition.** A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms ~~of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out~~ of ~~or relating to~~ the Contract. The responsibility to substantiate Claims shall rest with ~~the party making the Claim.~~ the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

...

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**§ 15.1.3.1** Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the ~~other party~~ Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party~~ the Contractor under this Section 15.1.3.1 shall be initiated within ~~21~~ ten (10) days after occurrence of the event giving rise to such Claim or within ~~21~~ ten (10) days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for ~~an~~ any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
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~~**§ 15.1.7 Waiver of Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

...

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

~~**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation~~

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~~within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

**~~§ 15.2.7~~** ~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

**~~§ 15.2.8~~** ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy~~ Any claim, dispute or other matter in question or arising out of or related to the ~~Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** The parties shall ~~endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**~~§ 15.3.3~~** ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

**~~§ 15.3.4~~** ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

**~~§ 15.4 Arbitration~~**

**~~§ 15.4.1~~** ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

**~~§ 15.4.1.1~~** ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

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~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:24:40 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A232™ – 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

1/31/2024

*(Title)*

Curtis Hartog, Executive Director

*(Dated)*

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# AIA® Document E203® – 2013

## *Building Information Modeling and Digital Data Exhibit*

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
*(Name and location or address of the Project)*

North High School Phase 3 Renovations
1500 James Avenue, Minneapolis, MN 55411

**TABLE OF ARTICLES**


1 GENERAL PROVISIONS

2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

3 DIGITAL DATA PROTOCOLS

4 BUILDING INFORMATION MODELING PROTOCOLS

5 OTHER TERMS AND CONDITIONS


**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project,.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

**§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

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**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:
*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

**§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

**ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**

**§ 2.1** The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital


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**User Notes:** (1481466487)

Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows:
*(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| **Anticipated Digital Data** | **Applicability to the Project** *(Indicate Applicable or Not Applicable)* | **Location of Detailed Description** *(Section 3.1.1 below or in an attachment to this exhibit and identified below)* |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*


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*(Paragraph deleted)*
§ .

**§ 3.2.3** The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

**§ 3.4 Unauthorized Use**

**§ 3.4.1 Prior to Establishment of Digital Data Protocols**

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 3.4.2 Following Establishment of Digital Data Protocols**

Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

**§ 3.5 Digital Data Management**

**§ 3.5.1** Centralized electronic document management system use on the Project shall be:
*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

[ ] The Parties do not intend to use a centralized electronic document management system on the Project.

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.
*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

| Responsible Project Participant | Project Milestone |
|---|---|
| Contractor | Project Construction begins |

**ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS**

**§ 4.1** If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:


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[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

**§ 4.2 Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

| Project Portion for Modeling | Responsible Project Participant |
|---|---|
| Project design | Architect |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.
*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**§ 4.5 Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

**§ 4.5.1** The Modeling protocols shall address the following:

**.1** Identification of the Model Element Authors;
**.2** Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
**.3** Identification of the required LOD of each Model Element at each identified Project milestone;
**.4** Identification of the construction classification systems to be used on the Project;
**.5** The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
**.6** The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
**.7** Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
**.8** Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
**.9** Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

None


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*(Paragraph deleted)*
§ .

**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

**§ 4.7 Unauthorized Use**

**§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

**§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

| Responsible Project Participant | Project Milestone |
|---|---|

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- **.1** Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
- **.2** Model file storage location(s)
- **.3** Processes for transferring and accessing Model files
- **.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.
- **.5** Processes for aggregating Model files from varying software platforms
- **.6** Model access rights
- **.7** Identification of design coordination and clash detection procedures.
- **.8** Model security requirements
- **.9** Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- **.1** Collect incoming Models:
  - **.1** Coordinate submission and exchange of Models
  - **.2** Create and maintain a log of Models received


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.3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
.4 Maintain a record copy of each Model file received

.2 Aggregate Model files and make them available for Authorized Uses
.3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
.4 Manage Model access rights
.5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and AutoCAD

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model | Applicability to Project *(Applicable or Not Applicable)* | Responsible Project Participant | Location of Detailed Description of Requirements and Services *(Section 4.10 below or in an attachment to this exhibit and identified below)* |
|---|---|---|---|
| **§ 4.9.1** Remodeling | Applicable | Owner | |
| **§ 4.9.2** Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** Energy Management | Applicable | Owner | |
| **§ 4.9.5** Space Management | Applicable | Owner | |
| **§ 4.9.6** Maintenance Management | Applicable | Owner | |
| | | | |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

## ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.


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# *Additions and Deletions Report for*

## *AIA® Document E203® – 2013*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:25:35 CT on 01/31/2024.

**PAGE 1**

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

North High School Phase 3 Renovations
1500 James Avenue, Minneapolis, MN 55411

...

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the ~~Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.~~ Project,.

...

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**PAGE 2**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~ .

...

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~3.

**PAGE 3**

| | | |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |

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| | | |
|---|---|---|
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

**§ 3.2.2** ~~The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.~~

**§** .

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data ~~protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.~~ protocols.

...

Following agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[ **X** ] The Parties intend to use a centralized electronic document management system on the Project.

...

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth ~~in the latest version of G201–2013 approved~~ d by the Project Participants.

...

Contractor Project Construction begins

**PAGE 5**

[ **X** ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design Architect

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**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project ~~Participants and further described for each LOD in AIA Document G202–2013.~~

Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

...

None

~~**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.~~

**§** .

**PAGE 6**

Following agreement to, and documentation of, the Modeling ~~protocols in AIA Document G202–2013,~~ protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

**.1** Model origin point, coordinate system, precision, file formats and ~~units~~units. The model shall be accurately geo-located to agreed-upon reference datum

...

**.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**PAGE 7**

Transmit to MPS the model in PDF, Revit and AutoCAD

...

| | | | | |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |

...

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As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:25:35 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/31/2024

*(Dated)*

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# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 26A Electrical

This work scope includes all electrical work for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $3,350,000 that includes the base bid and the selected alternates below.

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $15,000 | Rejected |
| **Alt#2: Toilets D106 & D206** | $15,000 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $98,000 | Rejected |
| **Alt#4: Auditorium Seating** | $1,370,000 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# FY21 North High School Phase 3

## Contract Sum: $105,355

## Contractor: Painting by Nakasone

## Project Name and Number

North High School Phase 3 Work Scope 9K Wall Coverings and Painting
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $105,355 | accepted |
| **Alt #1: Toilets D140 & D240** | $2,020 | rejected |
| **Alt #2: Toilets D106 & D206** | $2,285 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $6,040 | rejected |
| **Alt #4: Auditorium Seating** | $0 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Painting by Nakasone
1535 Marshall Avenue
St Paul, MN 55104

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 9K Wall Coverings and Painting
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be one hundred, five thousand, three hundred, fifty-five dollars ($ 105,355 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*

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§ 4.3 Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 4.4 Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 4.5 Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

§ 4.6 Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

.5 Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**

**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**

**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and

.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**

**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

## ARTICLE 6 DISPUTE RESOLUTION

**§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation
The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**
For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**
**§ 7.1 Where the Contract Sum is a Stipulated Sum**
**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*
**ARTICLE 8 MISCELLANEOUS PROVISIONS**
**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:

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*(Name, address, email address, and other information)*

John Kilbon
Project Manager
Painting by Nakasone
1535 Marshall Ave.
St Paul, MN 55104

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 8.8 Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

.2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

.3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

.5 Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovation Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovation Vol. 2 of 2 | October 30, 2023 |

.6 Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

.7 Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |

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| | | | |
|---|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*
*(Table deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Contractors bid documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | JOHN KOLBOW - PROJECT MANAGER |
| *(Printed name and title)* | *(Printed name and title)* |

Init.
/
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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:14:32 CT on 01/30/2024.

**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Painting by Nakasone
1535 Marshall Avenue
St Paul, MN 55104

...

North High School Phase 3 Work Scope 9K Wall Coverings and Painting
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ – ] Not later than ( ) calendar days from the date of commencement of the Work.~~

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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~~[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

~~[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*~~
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be one hundred, five thousand, three hundred, fifty-five dollars ($ 105,355 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract ~~Sum:~~
Sum are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Price~~ |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if ~~any:~~
~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~any are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

**§ 4.3** ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
~~**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~**§ 4.3.2** The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

John Kilbon
Project Manager
Painting by Nakasone
1535 Marshall Ave.
St Paul, MN 55104

...

**§ 8.5 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovation Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovation Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule

[ ] ~~AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work~~

~~[ – ] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ – ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

Contractors bid documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 9K Wallcoverings and Painting

This work scope includes all wallcoverings and painting for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $105,355

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $2,020 | Rejected |
| **Alt#2: Toilets D106 & D206** | $2,285 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $6,040 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 9K Wallcoverings and Painting

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School:  September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on the dates provided above.

# FY21 North High School Phase 3

## Contract Sum: $190,120

## Contractor: Red Cedar Steel Erectors

## Project Name and Number

North High School Phase 3 Work Scope 5B Structural Steel
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $190,120 | accepted |
| **Alt #1: Toilets D140 & D240** | $15,760 | rejected |
| **Alt #2: Toilets D106 & D206** | $15,760 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $0 | rejected |
| **Alt #4: Auditorium Seating** | $44,980 | Rejected |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Red Cedar Steel Erectors
4621 Domain Drive
Menomonie, WI 54751

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 5B Structural Steel
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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**TABLE OF ARTICLES**


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9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B DETERMINATION OF THE COST OF THE WORK


## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.



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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be one hundred ninety thousand, one hundred, twenty dollars ($ 190,120 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

**.5** Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**
**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**
**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and
**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**
**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
**.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

**ARTICLE 6 DISPUTE RESOLUTION**
**§ 6.1 Initial Decision Maker**
The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:


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*(Name, address, email address, and other information)*

Glen Pearson
Corporate Secretary
Red Cedar Steel Erectors
4621 Domain Drive
Menomonie, WI 54751

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**.2** AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

**.3** AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All Specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*
*(Table deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Contractors bid documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | Dan Debee - Project Manager |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:54:43 CT on 01/30/2024.

**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Red Cedar Steel Erectors
4621 Domain Drive
Menomonie, WI 54751

...

North High School Phase 3 Work Scope 5B Structural Steel
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ – ] Not later than ( ) calendar days from the date of commencement of the Work.~~

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be one hundred ninety thousand, one hundred, twenty dollars ($ 190,120 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract Sum:
Sum are defined in EXH-B Project Charter.

| Item | Price |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted below, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract Sum:Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if any:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)any are defined in EXH-B Project Charter.

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

**§ 4.3** Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum PriceAllowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

**§ 4.3.2** The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:

**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Glen Pearson
Corporate Secretary
Red Cedar Steel Erectors
4621 Domain Drive
Menomonie, WI 54751

...

**§ 8.5** ~~Insurance and Bonds~~**Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

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email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All Specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule

[ ] ~~AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ – ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

Contractors bid documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:54:43 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____ day of ___January_____ in the year __2024____
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 5B Structural Steel
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

Red Cedar Steel Erectors, 4621 Domain Drive
Menomonie, WI 54751

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ARTICLE A.1 GENERAL**

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

**ARTICLE A.2 OWNER'S INSURANCE**

**§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ A.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions



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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
**.2** personal injury and advertising injury;
**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
**.4** bodily injury or property damage arising out of completed operations; and


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.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*


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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $190,120 |
| Performance Bond | $190,120 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:55:25 CT on 01/30/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 31st day of January in the year 2024

...

North High School Phase 3 Work Scope 5B Structural Steel
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Red Cedar Steel Erectors, 4621 Domain Drive
Menomonie, WI 54751

**PAGE 2**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**PAGE 4**

**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.9** ~~If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.10** ~~Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.11** ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.12** ~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**PAGE 6**

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ – ] **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $190,120 |
| Performance Bond | $190,120 |

...

None

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# AIA® Document A232® – 2019

## *General Conditions of the Contract for Construction,* *Construction Manager as Adviser Edition*

**for the following PROJECT:**
*(Name, and location or address)*

North High School Phase 3 Work Scope 5B Structural Steel
1500 James Avenue, Minneapolis, MN 55411

**THE CONSTRUCTION MANAGER:**
*(Name, legal status, and address)*

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE ARCHITECT:**
*(Name, legal status, and address)*

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.


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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.

**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**§ 1.1.3 The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

**§ 1.1.7 The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**§ 1.1.8 The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.9 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.


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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

**§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

**§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

**§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to


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whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

**§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

**§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

**§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

**§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court


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or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.4** If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

**§ 2.3.5** If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 2.3.7** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.3.8** The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants'


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additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

**§ 3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.


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**§ 3.2.2** The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

**§ 3.2.4** If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.6** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

**§ 3.3.5** The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.


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**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

**§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

**§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents


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and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices, and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager,


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determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of


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commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

### § 3.11 Documents and Samples at the Site

**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

### § 3.12 Shop Drawings, Product Data, and Samples

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review


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by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must


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satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction


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Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

## ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

**§ 4.1.3** Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's consultants (1) during construction; (2) until final payment is due; and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.


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**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.

**§ 4.2.3** The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

**§ 4.2.4** The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

**§ 4.2.5** The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

**§ 4.2.7** The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.


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**§ 4.2.9** Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

**§ 4.2.10** The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

**§ 4.2.11** The Architect will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.

**§ 4.2.12** Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.13** The Construction Manager will prepare Change Orders and Construction Change Directives.

**§ 4.2.14** The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.15** Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

**§ 4.2.16** The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

**§ 4.2.17** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.


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**§ 4.2.18** The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

*(Paragraph deleted)*

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written


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confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

**§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

**.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

**.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

**§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

**§ 6.1.3** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors


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shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not reasonably discoverable.

**§ 6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

**§ 6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or


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substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

**.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

**.2** For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

**.3** For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

**.4** For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

**.5** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

**.6** In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

**§ 7.2 Change Orders and Change Proposals**

**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

**.1** The change in the Work;

**.2** The amount of the adjustment, if any, in the Contract Sum; and

**.3** The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without


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invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

**.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

**.2** Unit prices stated in the Contract Documents or subsequently agreed upon;

**.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

**.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

**.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;

**.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);

**.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

**.5** Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on


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the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

### § 8.2 Progress and Completion

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.


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**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

**.1** Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

**.2** Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);

**.3** Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

**.4** Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

**.5** Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

**.1** Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

**.2** In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

**.3** Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

**.4** With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

**.5** Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the


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Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

### § 9.3 Applications for Payment

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.


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**§ 9.3.1.2** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

> "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

**§ 9.4 Certificates for Payment**

**§ 9.4.1** Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.


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**§ 9.4.2** Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 9.4.2.1** Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

**§ 9.4.3** The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.6** The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of


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.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor or other Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

**§ 9.6.3** The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.


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**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect then the Contractor may, upon ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up which shall be accomplished as provided in Article 7.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and when the Architect issues a Certificate of Substantial Completion.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.3** Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.


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**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents


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and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

### § 9.11 Damages for Delay

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the


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Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

**§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- **.4** construction or operations by the Owner, Separate Contractors, or other Contractors.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.


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**§ 10.3 Hazardous Materials**

**§ 10.3.1** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**.1** Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

**.2** The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

*(Paragraph deleted)*

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.


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**§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

**§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.


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**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors,


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Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Paragraph deleted)*

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

**§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.


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## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

**§ 12.1.1** If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby.

#### § 12.2.2 After Substantial Completion

*(Paragraphs deleted)*

**§ 12.2.2.1**If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.


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**§ 12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the


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Contractor shall give a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe procedures. The Owner shall bear such costs, except as provided in Section 13.4.3.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

**§ 13.4.5** If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.5 Interest**

All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.


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Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

**.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

**.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

**.3** Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

**.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.1.5 No Right to Stop Work for Non-Payment

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10)


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days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

**.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

**.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

**.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

**.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

**.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

**.2** Accept assignment of subcontracts pursuant to Section 5.4; and

**.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

**.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

**.2** that an equitable adjustment is made or denied under another provision of this Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

**.1** cease operations as directed by the Owner in the notice;

**.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

**.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

*(Paragraph deleted)*


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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

**§ 15.1.1 Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

**§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

**§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

**§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.


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*(Paragraphs deleted)*

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

*(Paragraphs deleted)*

**§ 15.3 Mediation**

**§ 15.3.1** Any claim, dispute or other matter in question or arising out of or related to the Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

*(Paragraphs deleted)*


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# *Additions and Deletions Report for*
## *AIA® Document A232® – 2019*

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**PAGE 1**

North High School Phase 3 Work Scope 5B Structural Steel
1500 James Avenue, Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

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**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The ~~Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

...

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the ~~indicated~~ intended results.

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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

...

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

...

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit,~~ Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol ~~Form,~~ Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or ~~authorization.~~ authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

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**§ 2.3.5** ~~The~~ If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~ Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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**§ 3.1.3** The Contractor shall ~~not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.~~hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

**§ 3.2.1** ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally~~ The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors,

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inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, ~~and correlated personal observations with requirements of the Contract Documents.~~has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

**§ 3.2.2** ~~Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The ~~Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.~~Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

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**§ 3.2.4** If the Contractor believes that ~~additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

**§ 3.2.5** The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.6** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

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**§ 3.3.4** The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

**§ 3.3.5** The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

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**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

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**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

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**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

...

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume ~~appropriate~~ full responsibility for such Work and shall bear the ~~costs attributable~~

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~~to correction.~~attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ~~14~~ ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

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**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work.~~ Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

...

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

...

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

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**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

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~~The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

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**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

...

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and ~~approved by the Architect.~~accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with ~~approved~~ accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's ~~approval~~ acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written ~~approval~~ acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's ~~approval~~ acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's ~~approval~~ acceptance of a resubmission shall not apply to such revisions.

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**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such

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facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

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**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

...

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall ~~indemnify~~ indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

...

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

...

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's ~~representatives during construction until the date the Architect issues the final Certificate for Payment.~~ consultants (1) during construction; (2) until final payment is due; and (3) with the

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Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract ~~Documents.~~Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the ~~portion of the Work completed,~~ Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work ~~observed~~ is being performed in a manner indicating that the Work, when ~~fully~~ completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.2.2** The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.
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**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the ~~Owner.~~ Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

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**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.
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**§ 4.2.11** The Architect ~~will~~ will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness~~ or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.
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**§ 4.2.18** The Architect will interpret and decide matters concerning performance ~~under, and~~ under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness.~~ with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** ~~Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.~~Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

~~**§ 4.2.21** The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

...

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

...

**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time~~ The Contract Sum shall be increased or decreased by the ~~difference, if any,~~ difference in cost occasioned by such change, and an appropriate Change Order shall be ~~issued before commencement of the substitute Subcontractor's Work.~~ issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

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**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

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~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

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**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not ~~apparent.~~reasonably discoverable.

**§ 6.2.3** ~~The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or~~

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~~defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.~~Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

...

**§ 6.2.5** ~~The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.~~Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

...

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and ~~rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.~~rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

...

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. ~~An order for a minor change in the Work may be issued by the Architect alone.~~

...

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

**.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

**.2** For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

**.3** For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

**.4** For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

**.5** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

**.6** In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

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**§ 7.2 Change Orders and Change Proposals**

~~A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:~~**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

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**.3** The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

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**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others;~~others (at rates approved by the Owner);

...

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective ~~immediately and shall be recorded as a Change Order.~~immediately.

...

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**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for ~~Payment.~~ Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in ~~writing.~~ writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

...

**§ 8.1.4** The term "day" ~~as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.~~shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract ~~Time.~~Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

**.1** Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

**.2** Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets

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back on schedule as established by the CPM Schedule Report (including any updates thereto);

.3 Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

.4 Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

.5 Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

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**§ 8.3.1** If the Contractor is delayed at any time in the ~~commencement or~~ progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5)~~ or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

.1 Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

.2 In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

.3 Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

.4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

.5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

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**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be~~ Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. ~~This~~ The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment ~~prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required,~~ for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and ~~suppliers, and shall reflect retainage if provided for in the Contract Documents.~~material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

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**§ 9.3.1.2** ~~Applications for Payment~~ Such applications shall not include requests for payment ~~for portions of the Work for which the~~ of amounts the Contractor does not intend to pay a Subcontractor ~~or supplier,~~ or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

"That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

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**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

...

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect ~~or awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven~~ ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and ~~start-up, plus interest as provided for in the Contract Documents.~~start-up which shall be accomplished as provided in Article 7.

...

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended ~~use.~~use and when the Architect issues a Certificate of Substantial Completion.

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**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or ~~corrected prior to final payment.~~ corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

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**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special

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warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6), if required by the Owner,~~ including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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**§ 9.11 Damages for Delay**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

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~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.~~**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

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If either party suffers injury or ~~damage~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ ten (10) days after ~~discovery.~~ first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.

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**§ 10.3.1** ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify~~ In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless,

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the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect ~~of the condition.~~in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**.1** Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

**.2** The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** ~~Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

**§ 10.3.4** ~~The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

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Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

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In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

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Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~** ~~Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

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**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

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**~~§ 11.3.2~~** ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

**...**

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**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall ~~deposit the insurance proceeds in a separate account and~~ make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

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The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary ~~thereby, shall be at the Contractor's expense.~~thereby.

...

~~**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.~~

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~~**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.~~

~~**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

**§ 12.2.2.1** If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.4** ~~The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.~~ If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.5** ~~Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.~~ The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public ~~authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice~~ authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for~~ observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely~~ a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for such procedures. Such~~ observe procedures. The Owner shall bear such costs, except as provided in Section ~~13.4.3, shall be at the Owner's expense.~~13.4.3.

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~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the

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Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

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**§ 14.1.5 No Right to Stop Work for Non-Payment**

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

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**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

...

~~**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

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**§ 15.1.1 Definition.** A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms ~~of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out~~ of ~~or relating to~~ the Contract. The responsibility to substantiate Claims shall rest with ~~the party making the Claim.~~ the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

...

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**§ 15.1.3.1** Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the ~~other party~~ Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party~~ the Contractor under this Section 15.1.3.1 shall be initiated within ~~21~~ ten (10) days after occurrence of the event giving rise to such Claim or within ~~21~~ ten (10) days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for ~~an~~ any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
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~~**§ 15.1.7 Waiver of Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

...

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

~~**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation~~

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~~within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

~~**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

~~**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy~~ Any claim, dispute or other matter in question or arising out of or related to the ~~Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** The parties shall ~~endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

~~**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~**§ 15.4 Arbitration**~~

~~**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

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**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:56:29 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A232™ – 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# AIA® Document E203® – 2013

## *Building Information Modeling and Digital Data Exhibit*

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
*(Name and location or address of the Project)*

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

**TABLE OF ARTICLES**


1 GENERAL PROVISIONS

2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

3 DIGITAL DATA PROTOCOLS

4 BUILDING INFORMATION MODELING PROTOCOLS

5 OTHER TERMS AND CONDITIONS


### ARTICLE 1 GENERAL PROVISIONS

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project,.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

**§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.



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**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:
*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

**§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

**ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**

**§ 2.1** The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital


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Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows:
*(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| **Anticipated Digital Data** | **Applicability to the Project** *(Indicate Applicable or Not Applicable)* | **Location of Detailed Description** *(Section 3.1.1 below or in an attachment to this exhibit and identified below)* |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*


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*(Paragraph deleted)*
§ .

**§ 3.2.3** The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

**§ 3.4 Unauthorized Use**

**§ 3.4.1 Prior to Establishment of Digital Data Protocols**

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 3.4.2 Following Establishment of Digital Data Protocols**

Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

**§ 3.5 Digital Data Management**

**§ 3.5.1** Centralized electronic document management system use on the Project shall be:
*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

[ ] The Parties do not intend to use a centralized electronic document management system on the Project.

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.
*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

| Responsible Project Participant | Project Milestone |
|---|---|
| Contractor | Project Construction begins |

**ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS**

**§ 4.1** If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:


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[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

**§ 4.2 Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

| Project Portion for Modeling | Responsible Project Participant |
|---|---|
| Project design | Architect |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.
*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**§ 4.5 Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

**§ 4.5.1** The Modeling protocols shall address the following:

**.1** Identification of the Model Element Authors;
**.2** Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
**.3** Identification of the required LOD of each Model Element at each identified Project milestone;
**.4** Identification of the construction classification systems to be used on the Project;
**.5** The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
**.6** The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
**.7** Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
**.8** Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
**.9** Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

None


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*(Paragraph deleted)*
§ .

**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

**§ 4.7 Unauthorized Use**

**§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

**§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

| Responsible Project Participant | Project Milestone |
|---|---|

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- **.1** Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
- **.2** Model file storage location(s)
- **.3** Processes for transferring and accessing Model files
- **.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.
- **.5** Processes for aggregating Model files from varying software platforms
- **.6** Model access rights
- **.7** Identification of design coordination and clash detection procedures.
- **.8** Model security requirements
- **.9** Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- **.1** Collect incoming Models:
  - **.1** Coordinate submission and exchange of Models
  - **.2** Create and maintain a log of Models received


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.3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
.4 Maintain a record copy of each Model file received

.2 Aggregate Model files and make them available for Authorized Uses
.3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
.4 Manage Model access rights
.5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and AutoCAD

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model | Applicability to Project *(Applicable or Not Applicable)* | Responsible Project Participant | Location of Detailed Description of Requirements and Services *(Section 4.10 below or in an attachment to this exhibit and identified below)* |
|---|---|---|---|
| **§ 4.9.1** Remodeling | Applicable | Owner | |
| **§ 4.9.2** Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** Energy Management | Applicable | Owner | |
| **§ 4.9.5** Space Management | Applicable | Owner | |
| **§ 4.9.6** Maintenance Management | Applicable | Owner | |
| | | | |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

## ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.


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## *AIA® Document E203® – 2013*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the ~~Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.~~ Project,.

...

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**PAGE 2**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~ .

...

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~3.

**PAGE 3**

| | | |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |

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| | | |
|---|---|---|
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

**§ 3.2.2** ~~The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.~~

**§** .

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data ~~protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.~~ protocols.

...

Following agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[ **X** ] The Parties intend to use a centralized electronic document management system on the Project.

...

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth ~~in the latest version of G201–2013 approved~~ d by the Project Participants.

...

Contractor Project Construction begins

**PAGE 5**

[ **X** ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design Architect

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project ~~Participants and further described for each LOD in AIA Document G202–2013.~~

Participants.

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Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

...

None

~~**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.~~

**§** .

**PAGE 6**

Following agreement to, and documentation of, the Modeling ~~protocols in AIA Document G202–2013,~~ protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

**.1** Model origin point, coordinate system, precision, file formats and ~~units~~units. The model shall be accurately geo-located to agreed-upon reference datum

...

**.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**PAGE 7**

Transmit to MPS the model in PDF, Revit and AutoCAD

...

| | | | | |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |

...

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

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As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:57:25 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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**User Notes:** (1462462291)

# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 5B Structural Steel

This work scope includes all structural steel work for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium, childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $190,120. This includes the base bid of $190,120 and the accepted alternates.

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $15,760 | Rejected |
| **Alt#2: Toilets D106 & D206** | $15,760 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $0 | Rejected |
| **Alt#4: Auditorium Seating** | $44,980 | Rejected |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 5B Structural Steel

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School:  September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on the dates provided above.

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*Construction Company*

501 South Eighth Street
Minneapolis MN 55404

# Contract Change Order

**Project:** 2210222-02 MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**Contract #:** 2210222 - WS 01J
**Contract Change Order #:** 26
**Change Order Date:** 2/19/24

**To Contractor :** Rochon Corporation
28 2nd Street NW, Suite 200
Osseo, MN 55369

**THE CONTRACT IS CHANGED AS FOLLOWS:**

| PCO | Item | Description | Amount |
|---|---|---|---|
| 180 | 1 | GC - no cost per ASI 28 | $0.00 |
| 186 | 1 | Grade for KBEM temp sidewalk | $1,821.75 |
| 187 | 1 | No cost change per ASI #30 | $0.00 |
| 188 | 1 | GC per PR #100 | $1,155.00 |
| 190 | 1 | Cylinders for Additional Access Panels | $722.40 |
| 191 | 1 | Gutters at Storm Shelter Dampers | $2,343.60 |
| 194 | 1 | CE #279 - Electrical Room 290 | $785.40 |
| 197 | 1 | GC per PR #102 | $11,596.20 |
| 198 | 1 | CR 206 Build up floors at Nanowalls | $4,751.25 |
| 82.3 | 3 | GC per PR #41 - Equipment & Furniture (479 Main Studio) | $757,270.69 |
| | | **Total** | **$780,446.29** |

| | |
|---|---|
| **The original Contract Sum was** | **$23,525,000.00** |
| **The net change by previously authorized Change Orders was** | **$1,663,019.06** |
| **The Contract Sum prior to this Change Order was** | **$25,188,019.06** |
| **The Contract Sum will be increased by this Change Order** | **$780,446.29** |
| **The new Contract Sum will be** | **$25,968,465.35** |

**NOT VALID UNTIL SIGNED BY THE OWNER, CONSTRUCTION MANAGER, ARCHITECT AND CONTRACTOR**

Kraus-Anderson Construction Company

**CONSTRUCTION MANAGER** *(Firm name)*

501 South Eighth Street
Minneapolis MN 55404

**ADDRESS**

DocuSigned by:
Bre Nava
562A882583C1431...

**BY** *(Signature)*

Bre Nava

Dustin Kempf 2/19/2024 | 10:30 AM PST

*(Typed name)* **DATE:**

LSE Architects, Inc.

**ARCHITECT** *(Firm name)*

100 Portland Avenue South, Suite 100
Minneapolis. MN 55401

**ADDRESS**

DocuSigned by:
Deborah Bauknight
F65D4C431D924FB...

**BY** *(Signature)*

Deborah Bauknight 2/19/2024 | 1:48 PM CST

*(Typed name)* **DATE:**

Rochon Corporation

**CONTRACTOR** *(Firm name)*

28 2nd Street NW, Suite 200
Osseo, MN 55369

**ADDRESS**

DocuSigned by:
Paul Braton
5E73ECDFF6C3444...

**BY** *(Signature)*

Paul Braton 2/19/2024 | 1:18 PM EST

*(Typed name)* **DATE:**

Mpls Public Schools Special School Dist #1

**OWNER** *(Firm name)*

1250 West Broadway Avenue
Minneapolis, MN 55411

**ADDRESS**

**BY** *(Signature)*

*(Typed name)* **DATE:**

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*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 176.00

**Date:** 2/12/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***180 - LSE ASI #28 - Storm Shelter Signage Location***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | GC - no cost per ASI 28 | Rochon Corporation | $0.00 |
| | | **Total For Change Order** | **$0.00** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 2/16/2024 | 6:23 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Bre Nava 562A882533C1431... **Date:** 2/12/2024 | 1:45 PM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 2/15/2024 | 9:04 PM CS

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## Haney, Shanna

**From:** Tim Lindquist <TLindquist@rochoncorp.com>
**Sent:** Thursday, January 25, 2024 8:30 AM
**To:** Nava, Bre
**Cc:** Haney, Shanna; Kempf, Dustin
**Subject:** FW: MPSNHS PCO 180 ASI 28 - Storm Shelter Signage.pdf
**Attachments:** MPSNHS PCO 180 ASI 28 - Storm Shelter Signage.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Bre,
This one is no change in cost.

**Tim Lindquist**
*Project Manager*
Rochon

28 2nd Street NW, Suite 200 | Osseo, MN 55369

763-559-9393 *Office* | 763-235-3825 *Direct* | 763-559-8101 *Fax*

---

**From:** Haney, Shanna <shanna.haney@krausanderson.com>
**Sent:** Thursday, December 28, 2023 11:13 AM
**To:** Paul Braton <paulbraton@rochoncorp.com>; Tim Lindquist <TLindquist@rochoncorp.com>
**Cc:** Kempf, Dustin <dustin.kempf@krausanderson.com>; Nava, Bre <bre.nava@krausanderson.com>; Coleman, Terry <terry.coleman@krausanderson.com>; curtis.hartog <curtis.hartog@mpls.k12.mn.us>; Mariaha Dean <mariaha@edenresources.com>; 'joseph@edenresources.com' <joseph@edenresources.com>; Natasha "Tash" Brown <natasha@edenresources.com>
**Subject:** MPSNHS PCO 180 ASI 28 - Storm Shelter Signage.pdf

Good Morning,

Please see the attached MPS North High School BP1 PCO 180 ASI 28 for your review and response.

Thank you!

**Shanna Haney | Lead Project Coordinator**
shanna.haney@krausanderson.com | direct 612-255-2387

**KRAUS-ANDERSON CONSTRUCTION COMPANY**
501 South Eighth Street, Minneapolis, MN 55404
Office 612.332.7281 | Cell 612-202-9460 | krausanderson.com

*Together, strengthening the communities we serve*

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KRAUS-ANDERSON®
*Construction Company*

**501 South Eighth Street**
**Minneapolis, MN 55404**

# Supplementary Instructions

| | | | |
|---|---|---|---|
| Project: | 2210222-02<br>MPS - North High School Renovations & CTE OP#22-2232<br>1500 James Avenue<br>Minneapolis, MN 55411 | PCO #:<br><br>Date: | 180<br><br>12/28/2023 |
| To: | Terry Coleman, Kraus-Anderson Construction Company<br>Dustin Kempf, Kraus-Anderson Construction Company<br>Bre Nava, Kraus-Anderson Construction Company<br>Curtis Hartog, Mpls Public Schools Special School Dist #1<br>Paul Braton, Rochon Corporation<br>Tim Lindquist, Rochon Corporation | | |

Pursuant to General and Supplementary Conditions of the Contract, the following instructions are included in the work. All responses are required within seven (7) days.

**DESCRIPTION OF THE WORK:**

Please incorporate the following revisions/changes into your scope of work per the attached ASI #28 regarding Storm Shelter Signage Location.

Attachments: LSE ASI #28 dated 12/21/2023

☐ We have reviewed the PCO and acknowledge that it is a “no change” item and does not affect our completion date.

Signed By: _____ Date: _____

Company Name: _____

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# AIA® Document G710™ – 2017

## *Architect's Supplemental Instructions*

**PROJECT:** *(name and address)*
North High School
Special School District No. 1
1500 James Avenue
Minneapolis, MN 55411

**CONTRACT INFORMATION:**
Contract For: General Construction
Date: 5/31/2022

**ASI INFORMATION:**
ASI Number: 28
Date: 12/21/2023

**OWNER:** *(name and address)*
Minneapolis Public Schools
SSD 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**ARCHITECT:** *(name and address)*
LSE Architects, Inc.
1401 Glenwood Ave
Minneapolis, MN 55405

**CONTRACTOR:** *(name and address)*
Kraus-Anderson Construction
501 South 8th Street
Minneapolis, MN 55404

The Contractor shall carry out the Work in accordance with the following supplemental instructions without change in Contract Sum or Contract Time. Proceeding with the Work in accordance with these instructions indicates your acknowledgment that there will be no change in the Contract Sum or Contract Time.
*(Insert a detailed description of the Architect's supplemental instructions and, if applicable, attach or reference specific exhibits.)*

BP1 – Storm Shelter Signage Locations

Refer to updated drawing for locations of storm shelter required signage.

This coordinates with the returned signage submittal.

Attachments:
BP1 - Level 1 Floor Plan - Area B

**ISSUED BY THE ARCHITECT:**

LSE Architects, Inc.
**ARCHITECT** *(Firm name)*

Deborah Bauknight
**SIGNATURE**

Deborah Bauknight, PM/Contract Admin
**PRINTED NAME AND TITLE**

12/21/23
**DATE**

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**User Notes:** (3B9ADA47)

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*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 170.00

**Date:** 1/17/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***186 - Grade for KBEM temp sidewalk***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | Grade for KBEM temp sidewalk | Rochon Corporation | $1,821.75 |
| | | **Total For Change Order** | **$1,821.75** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 1/29/2024 | 7:17 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Dustin Kempf 65C274FC894C445... **Date:** 1/19/2024 | 10:09 AM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 1/26/2024 | 7:40 PM CS

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Rochon

PCO #193

Rochon Corporation
28 2nd St NW, Suite 200
Osseo, Minnesota 55369
Phone: (763) 559-9393
Fax: (763) 559-8101

**Project:** 2219 - North High School Renovations & CTE Center
1500 James Avenue North
Minneapolis, Minnesota 55411

# Prime Contract Potential Change Order #193: CE #266 - Grade for KBEM temp sidewalk

| | | | |
|---|---|---|---|
| **TO:** | Minneapolis Public Schools | **FROM:** | Rochon Corporation Minnesota<br>28 2nd St NW, Suite 200<br>Osseo, Minnesota 55369 |
| **PCO NUMBER/REVISION:** | 193 / 0 | **CONTRACT:** | 1 - North High School Renovations and CTE Center |
| **REQUEST RECEIVED FROM:** | | **CREATED BY:** | Tim Lindquist **(Rochon Corporation Minnesota)** |
| **STATUS:** | Pending - In Review | **CREATED DATE:** | 1/2/2024 |
| **REFERENCE:** | | **PRIME CONTRACT CHANGE ORDER:** | None |
| **FIELD CHANGE:** | No | | |
| **LOCATION:** | | **ACCOUNTING METHOD:** | Amount Based |
| **SCHEDULE IMPACT:** | | **PAID IN FULL:** | No |
| **EXECUTED:** | No | **SIGNED CHANGE ORDER RECEIVED DATE:** | |
| | | **TOTAL AMOUNT:** | $1,821.75 |

**POTENTIAL CHANGE ORDER TITLE:** CE #266 - Grade for KBEM temp sidewalk

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*
CE #266 - Grade for KBEM temp sidewalk
Grade for KBEM temp sidewalk. Remove curb at North side of storm shelter for new sidewalk (not shown on drawining to remove).

**ATTACHMENTS:**
[illegible]_001.pdf

| # | Budget Code | Description | Amount |
|---|---|---|---|
| 1 | 02-100.S Demo/Building Demo/Earthwork/Utilities | Ramsey - earthwork | $1,735.00 |
| | | **Subtotal:** | $1,735.00 |
| | | Overhead and Profit (5.00% Applies to all line item types.): | $86.75 |
| | | **Grand Total:** | $1,821.75 |

LSE Admin **(LSE Architects, Inc.)**
1401 Glenwood Ave
Minneapolis, Minnesota 55405

**Minneapolis Public Schools**

**Rochon Corporation Minnesota**
28 2nd St NW, Suite 200
Osseo, Minnesota 55369

| SIGNATURE | DATE | SIGNATURE | DATE | SIGNATURE | DATE |
|---|---|---|---|---|---|

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RAMSEY COMPANIES

**Date:** 11/2/2023

**COR#:** 38

Submitted to:

Rochon Corporation
28 2nd Street NW, Suite #200
Osseo, MN 55369
**Attn**: Tim Lindquist: tlindquist@rochoncorp.com

Project Name:

22039 Mpls. North HS Remodel & CTE Center
1500 James Avenue North
Minneapolis, MN

Description of Work Performed: Graded temp sidewalk. Removed curb by new sidewalk & backfill

# CHANGE ORDER REQUEST

| Quantity | Units | Equipment | Rate | |
|---|---|---|---|---|
| | | FCO 28864 | | |
| 2 | HR | Skid Steer - Tracked | 197.00 | 394.00 |
| | | FCO 28866 | | |
| 2 | HR | Skid Steer - Tracked | 197.00 | 394.00 |
| 2 | HR | Foreman | 120.00 | 240.00 |
| 2 | EA | Mobilization - Pick-Up (3 HR Minimum) | 275.00 | 550.00 |
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| | | | | - |
| | | | Sub Total | 1,578.00 |

10 % Profit/Overhead 157.00

**TOTAL** 1,735.00

PM: JW

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

RAMSEY COMPANIES
8297 Brooklyn Blvd, Minneapolis, MN 55445

# Field Change Order # 28864

Date: 11-25 Ramsey Job #: 2203

Job Name: north high

Change to Contract Amount: Yes [X] No [ ]

Owner/Client: Rochon

Client Rep:

Client PO/WO #:

Charge To: Rochon

DESCRIPTION OF WORK:

added rem sidewalk

## Equipment (**Operator Included**)

| Employee Name | Equip Type | Equip Description (Must use list on cover.) | Attachments Used | Hrs | OT Hrs |
|---|---|---|---|---|---|
| Sam Beiers | Skidsteer | Tracked | | 3 | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

## Labor

| Employee Name | Small Tool | Description | Blades, Rods, Etc. Used | Hrs | OT Hrs |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
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## Trucking (**Includes Operator**)

| Truck/Vendor | Truck # | Truck Type | Material Type | LDS/Quan | Hrs |
|---|---|---|---|---|---|
| | | | | | |
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## Material/Rentals/Other

| PO/Invoice # | Vendor | Item |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

WORK AUTHORIZED AND APPROVED BY:

Owner/Client Rep Signature — Date: 25 Nov 23 — Cell Phone #: 612-476-5787

Ramsey Rep Signature

Project Manager Notes:

COR #:

WHITE-OFFICE YELLOW-CLIENT PINK-LEAVE IN BOOK

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

RAMSEY COMPANIES
8297 Brooklyn Blvd, Minneapolis, MN 55445

# Field Change Order # 28866

Date: 10-27 Ramsey Job #: 22037
Job Name: North hill
Change to Contract Amount: Yes [X] No [ ]

Owner/Client: Bachon Client Rep:
Client PO/WO #: Charge To: Bachon

DESCRIPTION OF WORK:
Remove curb by new side walk

## Equipment (**Operator Included**)

| Employee Name | Equip Type | Equip Description (Must use list on cover) | Attachments Used | Hrs | OT Hrs |
|---|---|---|---|---|---|
| Tim B | Skidsteer | Trackless | hammer | 2 | |

## Labor

| Employee Name | Small Tool | Description | Blades, Rods, Etc. Used | Hrs | OT Hrs |
|---|---|---|---|---|---|
| Roberto S (P) | Shovel | Sealed Walk | | 2 | |

## Trucking (**Includes Operator**)

| Truck/Vendor | Truck # | Truck Type | Material Type | LDS/Quan | Hrs |
|---|---|---|---|---|---|
| Ramsey | | Pickup | mob x2 | 2 | 2 |

## Material/Rentals/Other

| PO/Invoice # | Vendor | Item |
|---|---|---|

WORK AUTHORIZED AND APPROVED BY:

Owner/Client Rep Signature — Date — Cell Phone #

Ramsey Rep Signature

Project Manager Notes:
COR #:

WHITE-OFFICE YELLOW-CLIENT PINK-LEAVE IN BOOK

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KRAUS-ANDERSON®
*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 177.00

**Date:** 2/12/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***187 - LSE ASI #30 - Storm Shelter Procedure for Owner***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | No cost change per ASI #30 | Rochon Corporation | $0.00 |
| | | **Total For Change Order** | **$0.00** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 2/16/2024 | 6:25 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Bre Nava 562A882533C1431... **Date:** 2/12/2024 | 1:46 PM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 2/15/2024 | 9:01 PM CS

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## Haney, Shanna

**From:** Tim Lindquist <TLindquist@rochoncorp.com>
**Sent:** Wednesday, January 10, 2024 2:25 PM
**To:** Haney, Shanna
**Cc:** Nava, Bre
**Subject:** RE: MPSNHS PCO 187 ASI 30 - Storm Shelter Procedure.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Shanna,
Since this is a “for your information” PCO, there is no change in cost.

**Tim Lindquist**
*Project Manager*
Rochon

28 2nd Street NW, Suite 200 | Osseo, MN 55369

763-559-9393 *Office* | 763-235-3825 *Direct* | 763-559-8101 *Fax*

---

**From:** Haney, Shanna <shanna.haney@krausanderson.com>
**Sent:** Wednesday, January 10, 2024 1:19 PM
**To:** Tim Lindquist <TLindquist@rochoncorp.com>; Paul Braton <paulbraton@rochoncorp.com>
**Cc:** Nava, Bre <bre.nava@krausanderson.com>; Coleman, Terry <terry.coleman@krausanderson.com>; Kempf, Dustin <dustin.kempf@krausanderson.com>; curtis.hartog <curtis.hartog@mpls.k12.mn.us>; Mariaha Dean <mariaha@edenresources.com>; 'joseph@edenresources.com' <joseph@edenresources.com>; Natasha "Tash" Brown <natasha@edenresources.com>
**Subject:** MPSNHS PCO 187 ASI 30 - Storm Shelter Procedure.pdf

Good Afternoon,

Please see the attached MPS North High School BP1 PCO 187 ASI 30 for your review and response.

Thank you!

**Shanna Haney | Lead Project Coordinator**
shanna.haney@krausanderson.com | direct 612-255-2387

**KRAUS-ANDERSON CONSTRUCTION COMPANY**
501 South Eighth Street, Minneapolis, MN 55404
Office 612.332.7281 | Cell 612-202-9460 | krausanderson.com

*Together, strengthening the communities we serve*

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*Construction Company*

**501 South Eighth Street**
**Minneapolis, MN 55404**

# Supplementary Instructions

| | | | |
|---|---|---|---|
| Project: | 2210222-02<br>MPS - North High School Renovations & CTE OP#22-2232<br>1500 James Avenue<br>Minneapolis, MN 55411 | PCO #: | 187 |
| | | Date: | 01/10/2024 |
| To: | Terry Coleman, Kraus-Anderson Construction Company<br>Dustin Kempf, Kraus-Anderson Construction Company<br>Bre Nava, Kraus-Anderson Construction Company<br>Curtis Hartog, Mpls Public Schools Special School Dist #1<br>Paul Braton, Rochon Corporation<br>Tim Lindquist, Rochon Corporation | | |

Pursuant to General and Supplementary Conditions of the Contract, the following instructions are included in the work. All responses are required within seven (7) days.

**DESCRIPTION OF THE WORK:**

Please incorporate the following revisions/changes into your scope of work per the attached ASI #30 regarding Storm Shelter Procedure for Owner.

Attachments: LSE ASI #30 dated 1/9/24

☐ We have reviewed the PCO and acknowledge that it is a “no change” item and does not affect our completion date.

Signed By: _____ Date: _____

Company Name: _____

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## *Architect's Supplemental Instructions*

**PROJECT:** *(name and address)*
North High School
Special School District No. 1
1500 James Avenue
Minneapolis, MN 55411

**CONTRACT INFORMATION:**
Contract For: General Construction
Date: 5/31/2022

**ASI INFORMATION:**
ASI Number: 30
Date: 1/9/2024

**OWNER:** *(name and address)*
Minneapolis Public Schools
SSD 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**ARCHITECT:** *(name and address)*
LSE Architects, Inc.
1401 Glenwood Ave
Minneapolis, MN 55405

**CONTRACTOR:** *(name and address)*
Kraus-Anderson Construction
501 South 8th Street
Minneapolis, MN 55404

The Contractor shall carry out the Work in accordance with the following supplemental instructions without change in Contract Sum or Contract Time. Proceeding with the Work in accordance with these instructions indicates your acknowledgment that there will be no change in the Contract Sum or Contract Time.
*(Insert a detailed description of the Architect's supplemental instructions and, if applicable, attach or reference specific exhibits.)*

BP1 – Storm Shelter Procedures For Owner

Refer to attached Storm Shelter Preparedness and Emergency Operations Plan (SSPEOP) for the gym storm shelter for Owner's use. This document describes the requirements to maintain and operate the storm shelter and provides general information on the location of items needed to operate the shelter. Included are logs and checklists.
The Owner will be provided with these in paper form as well as word documents for their use in maintaining the shelter.

Attachments:
SSPEOP document
Overall School Building Plan
Enlarged Storm Shelter Level 1
Enlarged Storm Shelter Level 2
Appendix A - Critical Contact Information
Appendix B - Emergency Contact List
Appendix D - Occupant Drill Log
Appendix E - Facilities Evaluation Log

**ISSUED BY THE ARCHITECT:**

LSE Architects, Inc.
**ARCHITECT** *(Firm name)*

Deborah Bauknight
**SIGNATURE**

Deborah Bauknight, PM/Contract Admin
**PRINTED NAME AND TITLE**

1/9/24
**DATE**

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**User Notes:** (3B9ADA46)

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LSE ARCHITECTS

# Storm Shelter Preparedness and Emergency Operations Plan (SSPEOP) for Minneapolis Public Schools

**The following document is to conform to ICC 500 Appendix A**

**January 5, 2024**

LSE ARCHITECTS, INC.

1401 Glenwood Ave.
Minneapolis, MN 55405

LSE-Architects.com
(612) 343-1010

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3



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**General Information:**

**Entity or Party Responsible for the Operation and Maintenance of the Storm Shelter:**

**Minneapolis Public Schools**

**Davis Center**

**1250 W Broadway Ave.**

**Minneapolis, MN 55411**

**612-668-0000**

**The Storm Shelter at Minneapolis North High School has been designed according to the following parameters:**

**Storm Type……..Tornado**

**Duration of Occupancy…….2 Hours**

**Function of Space When Not in Use as Storm Shelter…….Gymnasium**

**Occupancy Capacity…….1,700 persons**

**Intended Occupants…….Occupants of Minneapolis North High School**

**Hours of Operation…….8:30am-3:00pm M-F**

The Storm Shelter at Minneapolis North High School is registered with the following **organization:**

---

**Phone #:**

**Email:**

**Back-up**

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# Storm Shelter Preparedness and Emergency Operations Plan

## Preparedness Requirements

### Overview

**The purpose of the plan's preparedness requirements is to verify that the Storm Shelter is ready and maintained for use and will be fully operational during the storm. The Preparedness Requirements Section includes the following information:**

- **Understanding your Storm Shelter**
- **Storm Shelter Management Team roles and duties**
- **Team Training and Team Drills**
- **Occupant Notification Procedures – by Owner**
- **Occupant Drill Procedures – by Owner**
- **Communications Requirements**
- **Facilities Evaluations Guidelines**
- **Occupant Capacity Evaluation Guidelines**
- **Impact-Protective System Evaluation Guidelines**

### Understanding Your Storm Shelter

**The Storm Shelter is designed with several systems in place to ensure the safety of its occupants during a storm event. The following is an overview of those systems to provide information and understanding of how they work to the Storm Shelter Management Team, General Staff, and other intended occupants.**

**Secure Envelope**

**The Storm Shelter is designed with metal doors and frames to withstand the force of a tornado. The window is designed with a metal frame and overhead coiling door shutter to protect the opening from the storm.**

**Passive Ventilation**

**Passive ventilation is accomplished by allowing fresh air into the shelter near the floor and exhaust air to exit the shelter high on the wall. This means that no**

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**mechanical systems requiring power are needed to bring fresh air into the Storm Shelter.**

**Electrical Systems**

**It is possible that the power may go out during a storm event; the Storm Shelter will still function properly if this happens. The ventilation system does not require power to function and the lights and exhaust fans have battery back-ups that will allow them to work should this happen.**

**Safety Items**

**The Storm Shelter contains several safety features to handle medical or fire emergencies. The fire sprinkler protection system is part of the overall building and will not be operational if the main building goes down. The fire protection system does not need to stay operational during an event. Additionally, the Storm Shelter is required to have an operational fire extinguisher on hand. A first aid kit is also available within the Storm Shelter.**

**Toilet Facilities**

**As required, the Storm Shelter has toilet facilities designed to serve the occupants of the shelter that will remain functional during a storm event. The toilet rooms should be unlocked, and their availability made known to the occupants of the Storm Shelter.**

**Important Information for Occupants**

**For peace of mind, the Storm Shelter is furnished with a sign at the entrance that explains the design criteria for the construction of the Storm Shelter. This includes information regarding the wind speed the structure can tolerate and impact resistance rating. Additionally, it should be understood that during a storm event, no one can exit the Storm Shelter. This is for the safety of all occupants and the system itself. Back-up lighting systems will come on should the power go out. Fresh air will continue to flow through the space even if the power goes out as the ventilation system does not require power. In the event that the surrounding building may be damaged or destroyed, the Storm Shelter**

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**is designed to remain standing, in which case, the occupants are to stay in the Storm Shelter until emergency personnel arrives.**

## Storm Shelter Management Team

**The following roles are the minimum as required by the ICC 500 Appendix A; additional roles can be added and defined as needed by the User. Each role listed below shall have an individual assigned to it as a Primary and an additional individual assigned to be the Primary's Back-Up. Any added General Staff Roles whose duties are considered critical to Storm Shelter Emergency Operations shall be assigned a Primary and Back-Up as well.**

**Keep an up-to-date record of the individuals assigned to the Storm Shelter Management Team and their contact information. The Critical Contact Information Sheet (Attachment A) should be updated no less than once per year and be slotted near the beginning of the SSPEOP Manual for easy access during a storm event.**

### Storm Shelter Manager

**Duties:** **Authority to order the activation of the Storm Shelter**

**Authority to order the all clear for the deactivation of the Storm Shelter**

**Conduct necessary drills required to maintain preparedness**

**Address any problems that are found during Facilities Evaluations.**

### Storm Shelter Assistant Manager

**Duties:** **Recordkeeping of drills, training, evaluations, and outreach**

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## Storm Shelter Management Team Cont.

### Communications Manager

**Duties:** **Maintains possession and functionality of Alternate Communications Device**

**Contacting emergency services when necessary**

**Listening and relaying information from any Emergency Broadcasts**

### Envelope Security Personnel

**Duties:** **Secures and latches perimeter doors closed.**

**Secures and latches doors into the Mechanical Room and doors over the low passive ventilation louvers open.**

### Mechanical Security Personnel

**Duties:** **Open high passive ventilation louver's motorized dampers.**

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## Storm Shelter Management Team Cont.

### Security Personnel (Where Required)

**Duties:** Conduct inspections of Storm Shelter to identify and address occupant safety concerns.

Direct and assist the occupant evacuation into and out of the Storm Shelter.

Assist emergency response personnel where requested.

### Health Care Manager (Where Required)

**Duties:** Identify and assign medical support or first aid personnel.

Maintain first aid and medical support supplies for use during shelter activations.

Maintain any confidential medical information and coordinate accommodations.

Designate isolation areas for occupants with communicable illnesses and provide personal protective equipment, as appropriate.

### Fire Watch (Where Required)

**Duties:** Conduct an inspection of Storm Shelter Area to identify and mitigate any fire hazards.

Keep diligent watch for fires, obstructions to means of egress, and other hazards.

Take prompt measures for remediation of hazards and extinguishment of fires.

Take prompt measures to assist in the evacuation from the Storm Shelter.

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**Other:** _____

**Duties:**

_____

_____

_____

_____

_____

**Other:** _____

**Duties:**

_____

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_____

**Other:** _____

**Duties:**

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## Team Training and Team Drills

**Training of the Storm Shelter Management Team and their Back-Ups may be required periodically by the *Authority Having Jurisdiction*. The purpose of staff training is to provide members with current information on their duties and responsibilities as outlined in the SSPEOP and to provide an opportunity to practice execution of their duties with other team members through team-only and/or intended occupant drills.**

**The Storm Shelter Management Team at minimum should read through and answer any questions regarding the roles and duties of the Team, perform Storm Shelter Activation drills, and any other practice or training deemed necessary.**

## Occupant Notification

***(School to write methods and procedures to notify occupants of the following information:)***

- **Days and hours the Storm Shelter will be operational, including expectation of storm shelter use during off-hours**
- **Activation Signals and Drills**
- **Access to the Storm Shelter**
- **Policies**
- **Shelter Contact Information**

**Instances of the above-mentioned Occupant Notification should be recorded using the log included as Attachment C and kept in the back of the SSPEOP. This log should be created by the Owner.**

## Intended Occupant Drills

**No less than once per year, Intended Occupant Drills shall occur and involve the movement of the intended Storm Shelter occupants to the Storm Shelter. More frequent drilling may be required by the *Authority Having Jurisdiction*.**

***(School to provide procedure for Intended Occupant Drills)***

**Where required by the *Authority Having Jurisdiction*, prior notification of shelter activation drills be given to the *Authority Having Jurisdiction*.**

**Instances of the above-mentioned Intended Occupant Drill should be recorded using the log included as Attachment D and kept in the back of the SSPEOP.**

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## Communication

**The Storm Shelter is equipped with an alternate means of communication other than landline telephone or cellular telephone for the purpose of communicating with emergency responders or to receive critical information during or following Storm Shelter activation. The alternate communication device is the responsibility of the Storm Shelter Communications Manager and is to either be stored within the Storm Shelter proper or be brought to the Storm Shelter during a storm event by the Communications Manager. The alternate communication device can be any one of the following:**

- **Handheld amateur radio, citizens' band radio, or emergency radio capable of reaching police, fire, or other emergency services.**
- **A NOAA weather radio with continuously charging batteries or battery supply, as needed.**
- **A commercial radio with continuously charging batteries or battery supply, as needed.**
- **Cell phone as approved device by AHJ as additional option**

**It is the responsibility of the Storm Shelter Communications Manager to check the battery supply of the alternate communications device, as needed, during Facilities Evaluations as well as maintain the Emergency Contact Information List (Attachment B) with up-to-date information of the following Emergency Services:**

- **Local fire department**
- **Local police department**
- **Local emergency medical services**
- **Local emergency operation center**
- **Others, as needed/desired**

## Storm Shelter Facilities Evaluations

**The Storm Shelter shall be routinely evaluated on its preparedness to function properly in the event of a storm requiring activation. The purpose of this evaluation is to address Storm Shelter operational considerations beyond the required evaluations of the structural elements and protective assemblies. Storm Shelter Preparedness Evaluations shall occur a minimum of once a year. Where the evaluations indicate corrective action for Storm Shelter support systems, operational preparedness shall be restored by repairing or replacing the faulty systems or elements to comply with the applicable requirements of the ICC 500.**

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**Storm Shelter Facilities Evaluations Cont.**

**The Facilities Evaluation should, at a minimum, include the following items:**

- **Verify operation of ventilation, sanitation, and lighting systems.**
- **Verify operation of standby power supply.**
- **Verify operation of flashlights, where applicable.**
- **Check fire extinguishers.**
- **Check first aid supplies and resupply if necessary.**
- **Verify operation of alternative communication device.**
- **Verify that all required signage is present and legible.**
- **Verify water and food supplies where required for the Storm Shelter occupants.**
- **The date and persons conducting the evaluation.**
- **Findings for each identified evaluation item.**
- **Subsequent corrective actions where applicable.**
- **Date when corrective action completed where applicable.**

**The Facilities Evaluation Checklist (Attachment E) should be filled out and completed during each instance of the evaluation with the record logged in the back of the SSPEOP.**

**Occupancy Capacity Evaluations**

**Storm Shelters shall be evaluated not less than once a year to determine if the minimum usable floor area per occupant of 5 sf has been maintained to support the Storm Shelter Design Occupant Capacity upon activation of the shelter. Where the Storm Shelter's evaluated condition has been determined to impede activation or accommodation of the Storm Shelter's Design Occupant Capacity, corrective action shall be implemented to restore and maintain the ability to activate the Storm Shelter in accordance with the Emergency Operational Procedures of this document and to accommodate the Storm Shelter Design Occupant Capacity.**

**Each Occupancy Capacity Evaluation should be logged using Attachment F and kept in the back of the SSPEOP. Log to be created by Owner and may utilize the floor plans provided. Include the following information:**

- **The date and persons conducting the evaluation.**
- **Findings for each identified evaluation item.**
- **Subsequent corrective actions where applicable.**
- **Date when corrective action completed where applicable.**

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## Impact-Protective System Evaluation and Maintenance

**Storm Shelters shall be maintained in an operable condition at all times. All structural and operational elements shall be repaired or replaced where damaged or found to be inoperable. The Storm Shelter envelope and Impact-Protective Systems should be evaluated annually and when requested by the Authority Having Jurisdiction. The evaluation of the Storm Shelter shall include the following:**

- **The Storm Shelter Envelope shall be evaluated through visual observation to assess whether the walls and roofs are intact and undamaged.**
- **Impact-Protective Systems shall be evaluated for compliance with the manufacturer's operational and maintenance requirements.**
-

**Storm Shelters shall be maintained so that walls and roofs are intact and undamaged. Any damage to the Storm Shelter or its Impact-Protective Systems that impair its functionality shall be repaired or replaced. Damaged or missing components shall be replaced with components that are specified within the tested or listed assembly. Where necessary to replace certified or listed Impact-Protective Systems, replacements shall comply with applicable ICC 500 requirement, and shall be tested and installed as required by this standard for new installations or construction.**

**A record for the evaluations, and any other tests, repairs or replacements, and other operations and maintenance shall be kept at the back of the SPPEOP and consist of all changes to the original Storm Shelter envelope or Impact-Protective Systems. Records shall include the date and person conducting the evaluations and maintenance or repairs.**

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# Emergency Operational Procedures Requirements

## Overview

**The purpose of the SSPEOP's Emergency Operational Procedures requirements is to inform the owner or owner's agent of the *minimum* criteria for drafting an Emergency Operational Procedures Plan to properly respond to the threat of a tornado. The expected warning time and minimum design duration of the Storm Shelter – 2hrs – shall be taken into consideration when drafting the Emergency Operational Procedures Plan, as well as initiating operation during or after normal operating hours of the Host Building. The Emergency Operational Procedures Requirements Section includes the following information:**

- **Initiating Storm Shelter Activation**
- **Storm Shelter Activation**
- **Operations during a storm event**
- **Storm Shelter Deactivation**

## Initiating Storm Shelter Activation

**The Initiation stage includes the steps that should be taken prior to Storm Shelter Activation to ensure that the Storm Shelter and Storm Shelter Management Team is ready for operation during a storm event and/or not needlessly activated. The Initiation phase should include the following information:**

- **Identification of the Storm Shelter Management Team roles responsible for monitoring storm conditions and putting the rest of the team on alert when indicated.**
- **Major tasks, including roles and responsibilities, that the designated Storm Shelter Management Team will perform during a *TORNADO WATCH* issued by the National Weather Service.**
- **Major tasks that the designated Storm Shelter Management Team will perform during a *TORNADO WARNING* issued by the National Weather Service.**
- **List of specific triggers to initiate the following major tasks:**
    - **Opening the Storm Shelter**

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- **Notifying the intended occupants of the need to move to the Storm Shelter.**

## Storm Shelter Activation

**The Activation Stage of the Emergency Operations Procedures Plan includes the steps to be taken by the Storm Shelter Management Team to ensure safe and timely occupation of the Storm Shelter by the intended occupants as well as the means by which the Storm Shelter is secured to weather a storm event. The Activation phase should include the following information:**

- **Identification of designated Storm Shelter Management Team roles and duties needed to evacuate intended occupants from the Host Building to the Storm Shelter.**
- **Identification of designated Storm Shelter Management Team roles and duties needed to assist persons unable to use the access route to the Storm Shelter unassisted.**
- **Identification of each door or other Impact-Protective Device that needs to be secured during a storm and a description of when and how to secure them.**
- **Identification of the mechanical systems (ie ventilation, water, etc) that need to be secured during a storm and a description of when and how to secure them.**

## Operations During the Storm

**The Operations Stage of the Emergency Operations Procedures Plan is the phase after the Storm Shelter has been secured and lasts until the "all clear" is announced and the deactivation may begin. These are the steps carried out by the Storm Shelter Management Team during a storm event. The Operations phase should include the following:**

- **Procedures for accounting for staff and occupants after movement to the Storm Shelter has been completed.**
- **The preferred and any alternative means of reporting the active operation of the Storm Shelter to a designated response organization.**
- **A description of the plan for preparation, distribution and storage of water and food supplies, where provided.**

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## Storm Shelter Deactivation

**The Emergency Operations Procedures Plan's final stage is the Deactivation Stage. This section shall include the steps taken by the Storm Shelter Management Team after the storm event has ended. The Deactivation Phase should include the following:**

- **Procedures for determining when an "all clear" may be called.**
- **Procedures for determining if it is safe for occupants to leave the Storm Shelter after a storm event (i.e. debris, downed electrical lines, collapse of the Host Building etc…)**
- **The evacuation plan of the occupants from the Storm Shelter after the storm event.**
- **Procedures for accounting for staff and occupants leaving the Storm Shelter, including relocation for medical assistance, relocation to recovery facilities or other such plans.**

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## Storm Shelter Initiation

***(This section shall include the steps required to initiate the activation of the Storm Shelter, please include the information called out in the corresponding section of the Emergency Operations Procedures Requirements chapter of the SSPEOP)***

**General items, refer to details on next pages.**

**Once all occupants have entered the shelter, verify all doors are secured including entry doors from the school into the shelter.**

**Activate the coiling door shutter over the large window in the north wall to close the shutter and protect the opening in the wall. Key switch is located in Storage room B112F next to the pair of doors.**

**Open the low hollow metal door panels on north side wall with key and open flat to the wall to allow air flow through the exterior louvers – 7 thus.**

**Activate the high dampers on the east wall to open position with key switch. Key switch is located in Room B112F Storage room next to the pair of doors. This allows air flow through the high exterior louvers.**

**The passive ventilation system allows for the air pressure to be balanced between the exterior air and the air pressure inside the building. Air will flow through the high and low louvers to equalize the pressure.**

**There are back up systems for the electrical including the emergency lighting and exhaust fans that are self-contained and just need routine maintenance. If and when power goes down, the emergency inverters will take over instantaneously and emergency lighting will come on. Required exhaust fans will also operate at the bathrooms and mechanical rooms.**

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## Storm Shelter Activation

***(This section shall include the steps required to activate the Storm Shelter, please include the information called out in the corresponding section of the Emergency Operations Procedures Requirements chapter of the SSPEOP)***

1. **Intended Occupants Evacuation Plan – by Owner**
    a.
    b.
    c.
2. **Assisted Occupants Evacuation Plan – by Owner**
    a.
    b.
    c.
3. **Envelope Security Plan**
    a. **Ensure the following doors are latched closed and secure. Latching can be achieved by closing the door, securing can be achieved by locking the door:**
        i. **Door BS.1, the west door exiting from the stair within the Storm Shelter. Door 4 as labeled from the exterior.**
        ii. **Doors B112.2, the pair of doors on the north Storm Shelter wall. Door 5 as labeled from the exterior.**
        iii. **Doors B112.3 and B112.5, the double doors on the east wall of the Storm Shelter. Doors 6 and 7 as labeled from the exterior.**
        iv. **Door B202D, the second floor door at the south connection to the adjacent mechanical room.**
        v. **Door B112.4, the easternmost single door entering the Storm Shelter from the adjacent gym, after all occupants have entered the Storm Shelter.**
        vi. **Doors B112.1, the westernmost pair of doors entering the Storm Shelter from the main hall of the school, after all occupants have entered the Storm Shelter.**
    b. **Ensure the following doors are latched open and unlocked. Latching can be achieved by verifying that doors are unlocked for access as needed :**
        i. **Door BS.2, the door into the stair to access the second floor mechanical room.**
        ii. **Door B202C, the door into the mechanical room on the second floor.**

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4. **Activate the coiling door shutter over the large window in the north wall to close the shutter and protect the opening in the wall. Key switch is located in Storage room B112F next to the pair of doors.**
5. **Mechanical Security Plan**
    a. **Motorized dampers over exterior passive ventilation louvers up high should be opened via an electrical key switch. The switch can be found in Room B112F Storage. If power is out, system should operate via inverter.**
    b. **The fire sprinkler protection system is part of the overall building and will not be operational if the main building goes down.**
    c. **Storm Shelter's water lines are independent of the rest of the building, nothing needs to be done for water service to work.**

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## Storm Shelter Operations

***(This section shall include the steps required to operate the Storm Shelter, please include the information called out in the corresponding section of the Emergency Operations Procedures Requirements chapter of the SSPEOP)***

**No additional items need to be done during the storm. Power, water, and systems should be functional as described in the activation section.**

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## Storm Shelter Deactivation

***(This section shall include the steps required to deactivate the Storm Shelter, please include the information called out in the corresponding section of the Emergency Operations Procedures Requirements chapter of the SSPEOP)***

1. **Envelope Security Plan**
    a. **Ensure the following doors are returned to their normal operation by unlocking or leaving locked as appropriate for school operations.**
        i. **Door BS.1, the west door exiting from the stair within the Storm Shelter. Door 4 as labeled from the exterior.**
        ii. **Doors B112.2, the pair of doors on the north Storm Shelter wall. Door 5 as labeled from the exterior.**
        iii. **Doors B112.3 and B112.5, the double doors on the east wall of the Storm Shelter. Doors 6 and 7 as labeled from the exterior.**
        iv. **Door B202D, the second floor door at the south connection to the adjacent mechanical room.**
        v. **Door B112.4, the easternmost single door entering the Storm Shelter from the adjacent gym.**
        vi. **Doors B112.1, the westernmost pair of doors entering the Storm Shelter from the main hall of the school.**
    b. **Ensure the following doors are returned to their normal operation by unlocking or locking as appropriate for school operations.**
        i. **Door BS.2, the door into the stair to access the second floor mechanical room.**
        ii. **Door B202C, the door into the mechanical room on the second floor.**
    c. **Close the low hollow metal door panels on north side wall with key – 7 thus.**
    d. **Activate the coiling door shutter over the large window in the north wall to open the shutter after confirming that the window is still in place. Key switch is located in Storage room B112F next to the pair of doors.**
2. **Mechanical Security Plan**
    a. **Motorized dampers over exterior passive ventilation louvers up high should be closed via an electrical key switch. The switch can be found in Room B112F Storage.**
    b. **The fire sprinkler protection system is part of the overall building and will not be operational if the main building goes down.**

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c. **Storm Shelter's water lines are independent of the rest of the building, nothing needs to be done for water service to work.**

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**Critical Contact Information:** **Attachment A**

The following identifies the Storm Shelter Management Team's Roles and Contact Information, this represents the minimum management team required or deemed critical. Contact Information shall be updated no less than once per year or as needed:

| | | |
|---|---|---|
| Storm Shelter Manager | Name: | |
| | Phone #: | |
| | Email: | |
| | | Primary |
| | Name: | |
| | Phone #: | |
| | Email: | |
| | | Back-Up |
| Storm Shelter Asst Manager | Name: | |
| | Phone #: | |
| | Email: | |
| | | Primary |
| | Name: | |
| | Phone #: | |
| | Email: | |
| | | Back-Up |
| Impact Protective Systems Manager | Name: | |
| | Phone #: | |
| | Email: | |
| | | Primary |
| | Name: | |
| | Phone #: | |
| | Email: | |
| | | Back-up |
| Security Personnel | Name: | |
| | Phone # | |
| | Email: | |
| | | Primary |
| | Name: | |
| | Phone #: | |
| | Email: | |
| | | Back-Up |

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3



**Critical Contact Information Cont.** **Attachment A**

The following identifies the Storm Shelter Management Team's Roles and Contact Information, this represents the minimum management team required or deemed critical. Contact Information shall be updated no less than once per year or as needed:

| | | |
|---|---|---|
| Health Care Personnel | Name: | |
| | Phone #: | |
| | Email: | |
| | | Primary |
| | Name: | |
| | Phone #: | |
| | Email: | |
| | | Back-Up |
| Fire Watch Personnel | Name: | |
| | Phone #: | |
| | Email: | |
| | | Primary |
| | Name: | |
| | Phone #: | |
| | Email: | |
| | | Back-Up |
| Envelope Security Personnel | Name: | |
| | Phone #: | |
| | Email: | |
| | | Primary |
| | Name: | |
| | Phone #: | |
| | Email: | |
| | | Back-Up |
| Mechanical Security Personnel | Name: | |
| | Phone #: | |
| | Email: | |
| | | Primary |
| | Name: | |
| | Phone #: | |
| | Email: | |
| | | Back-Up |

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3



**Critical Contact Information Cont.** **Attachment A**

The following identifies the Storm Shelter Management Team's Roles and Contact Information, this represents the minimum management team required or deemed critical. Contact Information shall be updated no less than once per year or as needed:

| | |
|---|---|
| Other | Name: |
| | Phone #: |
| | Email: |
| | Primary |
| | Name: |
| | Phone #: |
| | Email: |
| | Back-Up |
| Other | Name: |
| | Phone #: |
| | Email: |
| | Primary |
| | Name: |
| | Phone #: |
| | Email: |
| | Back-Up |
| Other | Name: |
| | Phone #: |
| | Email: |
| | Primary |
| | Name: |
| | Phone #: |
| | Email: |
| | Back-Up |
| Other | Name: |
| | Phone #: |
| | Email: |
| | Primary |
| | Name: |
| | Phone #: |
| | Email: |
| | Back-Up |

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

**Emergency Contact and Communications:** **Attachment B**

| | |
|---|---|
| Fire Department: | Emergency #: |
| | Non-Emergency #: |
| | Radio Frequency: |
| Police Department: | Emergency #: |
| | Non-Emergency #: |
| | Radio Frequency: |
| Emergency Medical Services: | Emergency #: |
| | Non-Emergency #: |
| | Radio Frequency: |
| Emergency Operations Center: | Emergency #: |
| | Non-Emergency #: |
| | Radio Frequency: |

Alternate means of communication to allow for communication with emergency services or to receive critical information, shall include no less than one of the following and either be located within the Storm Shelter or be the responsibility of the indicated Team Member. Fill out the following:

**Means of Communication:**

☐ Handheld amateur radio, citizens' band radio, or emergency radio capable of reaching police, fire, or other emergency services.

☐ A NOAA weather radio with continuously charging batteries or battery supply, as needed.

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☐ A commercial radio with continuously charging batteries or battery supply as needed for receiving emergency broadcasts.

**Location of Emergency Communication Device:**

☐ Location within Storm Shelter: _____

☐ Team Member: _____ Name: _____

Phone #: _____

Email: _____

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LSE ARCHITECTS

**Attachment D**

# Minneapolis North High School - Storm Shelter Occupant Drill

Drill Conductor: _____ Date: _____

Notification Method: _____ # Occupants: _____

Special Conditions Simulated: _____

Weather Conditions: _____ Evacuation Time: _____

Problems Encountered:

_____

_____

_____

_____

Staff Participants:

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

LSE ARCHITECTS, INC.

1401 Glenwood Ave.
Minneapolis, MN 55405

LSE-Architects.com
(612) 343-1010

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

LSE ARCHITECTS

**Attachment E**

# Minneapolis North High School - Storm Shelter Facilities Evaluation Logs

The Storm Shelter shall be routinely evaluated on its preparedness to function properly in the event of a storm requiring activation. The purpose of this evaluation is to address Storm Shelter operational considerations beyond the required evaluations of the structural elements and protective assemblies.

Storm Shelter Preparedness Evaluations shall occur a minimum of once a year. Where the evaluations indicate corrective action for Storm Shelter support systems, operational preparedness shall be restored by repairing or replacing the faulty systems or elements to comply with the applicable requirements of the ICC 500.


| | |
|---|---|
| **Ventilation System** | **p. 2** |
| **Sanitation Systems** | **p. 2** |
| **Lighting Systems** | **p. 3** |
| **Standby Power Supply** | **p. 3** |
| **(Optional) Flashlights** | **p. 4** |
| **Fire Extinguishers** | **p. 4** |
| **First Aid Supplies** | **p. 5** |
| **Alt Communication** | **p. 6** |
| **Required Signage** | **p. 6** |
| **Food/Water Supplies** | **p. 7** |

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**Facilities Evaluation Checklist:**

Date of Evaluation: _____ Date of Last Evaluation: _____

Overseen By: _____ Initials: _____

**Ventilation System** Operational (Y/N): _____

Team Member Responsible: _____ Initials: _____

Problems: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

**Sanitation Systems** Operational (Y/N): _____

Team Member Responsible: _____ Initials: _____

Problems: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

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**Facilities Evaluation Checklist Cont'd:**

**Lighting Systems** Operational (Y/N): _____

Team Member Responsible: _____ Initials: _____

Problems: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

**Standby Power Supply** Operational (Y/N): _____

Team Member Responsible: _____ Initials: _____

Problems: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

Date of Evaluation: _____ Date of Last Evaluation: _____

Overseen By: _____ Initials: _____

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**Facilities Evaluation Checklist Cont'd:**

**(Optional) Flashlights** Operational (Y/N): _____

Team Member Responsible: _____ Initials: _____

Problems: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

**Fire Extinguishers** Operational (Y/N): _____

Team Member Responsible: _____ Initials: _____

Problems: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

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**Facilities Evaluation Checklist Cont'd:**

**First Aid Supplies** Stocked (Y/N): _____

Team Member Responsible: _____ Initials: _____

Supply Needs: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

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**Facilities Evaluation Checklist Cont'd:**

**Alt Communication** Operational (Y/N): _____

Team Member Responsible: _____ Initials: _____

Problems: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

Date of Evaluation: _____ Date of Last Evaluation: _____

Overseen By: _____ Initials: _____

**Required Signage** Present (Y/N): _____

Team Member Responsible: _____ Initials: _____

Problems: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

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**Facilities Evaluation Checklist Cont'd:**

**Food/Water Supplies** Stocked (Y/N): _____

Team Member Responsible: _____ Initials: _____

Supply Needs: _____

_____

Corrective Action: _____

_____

Responsible Team Member Signature: _____ Date: _____

Storm Shelter Preparedness Evaluations shall occur a minimum of once a year. Where the evaluations indicate corrective action for Storm Shelter support systems, operational preparedness shall be restored by repairing or replacing the faulty systems or elements to comply with the applicable requirements of the ICC 500.

_____ _____

Overseer's Signature Date

_____

Printed Name

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KRAUS-ANDERSON®
*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 174.00

**Date:** 2/6/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***188 - LSE PR #100 - Modifications to Inverter to Add Dampers***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | GC per PR #100 | Rochon Corporation | $1,155.00 |
| | | **Total For Change Order** | **$1,155.00** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 2/16/2024 | 8:48 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Bre Nava 562A882533C1431... **Date:** 2/6/2024 | 3:39 PM PST

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 2/14/2024 | 9:00 PM CS

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

Rochon

# PCO #200

Rochon Corporation
28 2nd St NW, Suite 200
Osseo, Minnesota 55369
Phone: (763) 559-9393
Fax: (763) 559-8101

**Project:** 2219 - North High School Renovations & CTE Center
1500 James Avenue North
Minneapolis, Minnesota 55411

## Prime Contract Potential Change Order #200: CE #278 - Inverter modfications for storm shelter dampers

| | | | |
|---|---|---|---|
| **TO:** | Minneapolis Public Schools | **FROM:** | Rochon Corporation Minnesota<br>28 2nd St NW, Suite 200<br>Osseo, Minnesota 55369 |
| **PCO NUMBER/REVISION:** | 200 / 0 | **CONTRACT:** | 1 - North High School Renovations and CTE Center |
| **REQUEST RECEIVED FROM:** | | **CREATED BY:** | Tim Lindquist **(Rochon Corporation Minnesota)** |
| **STATUS:** | Pending - In Review | **CREATED DATE:** | 1/30/2024 |
| **REFERENCE:** | | **PRIME CONTRACT CHANGE ORDER:** | None |
| **FIELD CHANGE:** | No | | |
| **LOCATION:** | | **ACCOUNTING METHOD:** | Amount Based |
| **SCHEDULE IMPACT:** | | **PAID IN FULL:** | No |
| **EXECUTED:** | No | **SIGNED CHANGE ORDER RECEIVED DATE:** | |
| | | **TOTAL AMOUNT:** | $1,155.00 |

**POTENTIAL CHANGE ORDER TITLE:** CE #278 - Inverter modfications for storm shelter dampers

**CHANGE REASON:** Design Development

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*
CE #278 - Inverter modfications for storm shelter dampers
KA PCO 188, PR 100
Modify inverter for storm shelter dampers.

**ATTACHMENTS:**
MPS North CTE PR 100.pdf

| # | Budget Code | Description | Amount |
|---|---|---|---|
| 1 | 16-000.S Electrical / LV | Modify inverters | $1,100.00 |
| | | **Subtotal:** | **$1,100.00** |
| | | Overhead and Profit (5.00% Applies to all line item types.): | $55.00 |
| | | **Grand Total:** | **$1,155.00** |

**LSE Admin (LSE Architects, Inc.)**
1401 Glenwood Ave
Minneapolis, Minnesota 55405

**SIGNATURE** **DATE**

**Minneapolis Public Schools**

**SIGNATURE** **DATE**

**Rochon Corporation Minnesota**
28 2nd St NW, Suite 200
Osseo, Minnesota 55369

**SIGNATURE** **DATE**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

MIDWEST ELECTRICAL CONSTRUCTION
COMMERCIAL & INDUSTRIAL WIRING

January 28, 2024

Tim Lindquist
Rochon Corporation
28 2nd St. NW Suite 200
Osseo, MN 55369

Re: Minneapolis North High School CTE PR #100

Tim,

Below is our response PR #100 providing electrical modifications to the dampers in the new gymnasium:

| | |
|---|---|
| Labor: 8 hours @ $120.00 per hour: | $960.00 |
| Materials: | $40.00 |
| Mark-up: | $100.00 |
| Total: | $1100.00 |

Our total for the above is *$1,100.00.*

Thank you.

Sincerely,

Brian Hunt

3825 LAKE ELMO AVENUE NORTH, SUITE A • LAKE ELMO, MN 55042
Phone: (651) 773-1287 • Fax: (651) 773-1288
E-Mail: INFO@MIDWEST-ELECTRICAL.NET

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KRAUS-ANDERSON®
*Construction Company*

**501 South Eighth Street**
**Minneapolis, MN 55404**

# Request For Proposal

| | | | |
|---|---|---|---|
| Project: | 2210222-02<br>MPS - North High School Renovations & CTE OP#22-2232<br>1500 James Avenue<br>Minneapolis, MN 55411 | PCO #: | 188 |
| | | Date: | 01/16/2024 |
| To: | Terry Coleman, Kraus-Anderson Construction Company<br>Dustin Kempf, Kraus-Anderson Construction Company<br>Bre Nava, Kraus-Anderson Construction Company<br>Curtis Hartog, Mpls Public Schools Special School Dist #1<br>Paul Braton, Rochon Corporation<br>Tim Lindquist, Rochon Corporation<br>Mariaha Dean, Eden Resources<br>Natasha Brown, Eden Resources<br>Joseph Grant, Eden Resources | | |

Please provide a cost breakdown in accordance with the Contract Documents and a Summary for the Change described herein and on the attachments (if any) listed. All responses are required within seven (7) days.

This is not an authorization to proceed with the work described herein unless and until approved by the Owner. On approval, this change will be included in a Change Order, which will provide the formal Contract Change.

**DESCRIPTION OF PROPOSAL:**

Please provide a cost estimate per the attached PR #100 regarding Modifications to INverter to Add Dampers.

Attachments: LSE PR #100 dated 1/12/24

☐ We have reviewed the PCO and acknowledge that it is a “no change” item and does not affect our completion date.

Signed By: _____ Date: _____

Company Name: _____

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# AIA® Document G709™ – 2018

## *Proposal Request*

**PROJECT:** *(name and address)*
North High School
Special School District No. 1
1500 James Avenue
Minneapolis, MN 55411

**CONTRACT INFORMATION:**
Contract For: General Construction
Date: 5/31/2022

Architect's Project Number: 21.1002.01
Proposal Request Number: 100
Proposal Request Date: 1/12/2024

**OWNER:** *(name and address)*
Minneapolis Public Schools
SSD 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**ARCHITECT:** *(name and address)*
LSE Architects, Inc.
1401 Glenwood Ave
Minneapolis, MN 55405

**CONTRACTOR:** *(name and address)*
Kraus-Anderson Construction
501 South 8th Street
Minneapolis, MN 55404

The Owner requests an itemized proposal for changes to the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. The Contractor shall submit this proposal within Fourteen (14) days or notify the Architect in writing of the anticipated date of submission.
*(Insert a detailed description of the proposed modifications to the Contract Documents and, if applicable, attach or reference specific exhibits.)*

**BP1 – Modifications to Inverter to Add Dampers**

**Provide pricing for modifiying the installed inverter to accommodate the storm shelter dampers for when the power goes off in an event. Refer to attached HEI documents.**

**Provide detailed breakdown of additions and/or credits per project manual.**

**Attachments:**
**HEI written narrative**
**BP1 - E610.1 - Building Equipment Schedule**

**THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE, OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.**

**REQUESTED BY THE ARCHITECT:**

Deborah Bauknight, PM/Contract Admin
**PRINTED NAME AND TITLE**

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**User Notes:** (3B9ADA46)

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

HALLBERG ENGINEERING

# PROPOSAL REQUEST

PROPOSAL REQUEST NO. PR #100

TO DRAWINGS AND SPECIFICATIONS
FOR THE MECHANICAL/ELECTRICAL CONSTRUCTION FOR THE
MPS NORTH HIGH SCHOOL RENOVATIONS AND CTE CENTER - BP1

1500 JAMES AVENUE NORTH,
MINNEAPOLIS, MN 55411

PROJECT NO. R21-4151.000

DATE OF ORIGINAL DRAWINGS AND SPECIFICATIONS.....08/23/2022
DATE OF ORIGINAL PROPOSAL REQUEST .....11/28/2023
DATE OF THIS PROPOSAL REQUEST .....01/12/2024

TO: ELECTRICAL CONTRACTOR

Storm shelter louver/shutters – provide power from inverter for backup control for louvers to fail open.

**CHANGES TO ELECTRICAL PLANS**

**1. E610.1 – BUILDING EQUIPMENT SCHEDULE**

A. Refer to attached drawing E610.1 for additional information.

**CHANGES TO ELECTRICAL DESIGN AND BRANCH CIRCUITRY TO INVERTER WRITTEN NARRATIVE**

**1. WRITTEN NARRATIVE TO RELOCATE EF-03 BRANCH CIRCUIT AND ADD LOUVER BRANCH CIRCUITS**

A. Refer to attached drawing E610.1 for additional information.
B. Relocate EF-03 branch circuit at inverter to branch circuit with EF-01. Provide disconnect for each Exhaust Fan (EF-01 and EF-03).
C. Louvers are fed from low voltage panel (6 circuits). Combine louver circuits and connect to open 15A/1P circuit breaker vacated from moving EF-03 to EF-01 branch circuit.
D. Louvers - modify, extend and provide new wiring and conduit as required and connect to inverter.

**END OF PROPOSAL REQUEST**


*Mechanical/Electrical/Commissioning/Energy*
1750 Commerce Court • White Bear Lake, MN 55110 • Phone (651) 748-1100 • Fax (651) 748-9370

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

KRAUS-ANDERSON®
*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 172.00

**Date:** 1/17/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***190 - Cylinders for Additional Access Panels***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | Cylinders for Additional Access Panels | Rochon Corporation | $722.40 |
| | | **Total For Change Order** | **$722.40** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 1/29/2024 | 7:16 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Dustin Kempf 65C274FC894C445... **Date:** 1/23/2024 | 10:49 AM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 1/26/2024 | 7:49 PM CS

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# Rochon

# PCO #195

Rochon Corporation
28 2nd St NW, Suite 200
Osseo, Minnesota 55369
Phone: (763) 559-9393
Fax: (763) 559-8101

**Project:** 2219 - North High School Renovations & CTE Center
1500 James Avenue North
Minneapolis, Minnesota 55411

## Prime Contract Potential Change Order #195: CE #269 - Cylinders for additional access panels

| | | | |
|---|---|---|---|
| **TO:** | Minneapolis Public Schools | **FROM:** | Rochon Corporation Minnesota<br>28 2nd St NW, Suite 200<br>Osseo, Minnesota 55369 |
| **PCO NUMBER/REVISION:** | 195 / 0 | **CONTRACT:** | 1 - North High School Renovations and CTE Center |
| **REQUEST RECEIVED FROM:** | | **CREATED BY:** | Tim Lindquist **(Rochon Corporation Minnesota)** |
| **STATUS:** | Pending - In Review | **CREATED DATE:** | 1/10/2024 |
| **REFERENCE:** | | **PRIME CONTRACT CHANGE ORDER:** | None |
| **FIELD CHANGE:** | No | | |
| **LOCATION:** | | **ACCOUNTING METHOD:** | Amount Based |
| **SCHEDULE IMPACT:** | | **PAID IN FULL:** | No |
| **EXECUTED:** | No | **SIGNED CHANGE ORDER RECEIVED DATE:** | |
| | | **TOTAL AMOUNT:** | $722.40 |

**POTENTIAL CHANGE ORDER TITLE:** CE #269 - Cylinders for additional access panels

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*
CE #269 - Cylinders for additional access panels
Additional cylinders for added access panels at the gym. Requested by Terry.

**ATTACHMENTS:**
COR#08 MISC CYLINDERS.pdf

| # | Budget Code | Description | Amount |
|---|---|---|---|
| 1 | 08-100.S Doors / HDWR | Additional cylinders | $688.00 |
| | | **Subtotal:** | **$688.00** |
| | | Overhead and Profit (5.00% Applies to all line item types.): | $34.40 |
| | | **Grand Total:** | **$722.40** |

**LSE Admin (LSE Architects, Inc.)**
1401 Glenwood Ave
Minneapolis, Minnesota 55405

**SIGNATURE** **DATE**

**Minneapolis Public Schools**

**SIGNATURE** **DATE**

**Rochon Corporation Minnesota**
28 2nd St NW, Suite 200
Osseo, Minnesota 55369

**SIGNATURE** **DATE**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

TCH | Twin City Hardware

723 Hadley Ave N
Oakdale, MN 55128
Phone 651-735-2200
Fax 651-735-1800

# Change Order Request #08

**TO:** ROCHON CORP
28 2nd Street NW
Osseo, MN 55369
**ATTN:** TIM LINDQUIST
**Phone:** 612-490-5642
**Email:** TLINDQUIST@ROCHONCORP.COM

**DATE:** December 4, 2023

**TCH CONTRACT NO.:**
**PROJECT NAME:** North High School Reno & CTE Center
**PROJECT LOCATION:** 1500 James Ave N
Minneapolis, MN 55411

**The current lead time for product on this change order is: xxx working days upon written acceptance, which is required, to maintain quoted price, otherwise price and/or delivery date will be affected. The acceptance of this change order may or may not cause delays in your project timeline, depending on the type of change involved****

**MISC cylinders** **ADD: $688.00**

(7) Schlage 20-001-626-118-C
for access panels

(2) Schlage 30-001-626-134-C

BOTH ITEMS REQUESTED BY TERRY COLEMAN AS EXTRAS

**Amount This Change Order... $688.00** Includes Tax of 8.025%

**Notes and Exclusions:**

**Alternates:**
Information

If you have any questions, please call me direct at 651-731-7173 or email at jhorn@tchco.com

This Change Order must be signed by a representative of said company & returned to TCH via fax or email before additional material will be shipped or labor performed. This protects both parties and, in most cases, is required by the contract or your home office.

**Accepted by** _____
(COMPANY NAME)

**Signed** _____
**Printed Name** _____
**Title** _____
**Date** _____

Respectfully submitted,

**TWIN CITY HARDWARE**

**By** Jim Horn Digitally signed by Jim Horn DN: C=US, E=jhorn@tchco.com, O=Twin City Hardware, CN=Jim Horn Date: 2023.12.04 10:45:17-06'00'

Jim Horn
Project Manager

The person signing above acknowledges they are a certified representative of the above listed company with full authority to execute this change order. By signing this change order the above listed company agrees to payment of said Change Order per TCH's credit terms. The person also acknowledges that changes to scope may delay delivery dates as lead times vary based on product availability. All order information, as well as this Change Order Form, must be given to Twin City Hardware with enough time to adhere to lead time requirements, order entry time, shipping time, and workload. Failure to do so absolves Twin City Hardware of any additional costs incurred due to shipment delays. By accepting this correspondence of change, the person also accepts all terms noted on this form, or on any form related to this change, including form of said company accepting the change.

**All prices are confidential and are the property of TCH. Freight F.O.B. destination. Any changes to project documents may affect the price. All changes will be required to have an executed change order signed by all parties prior to any material being released to jobsite. Back charges for work performed without prior written authorization from TCH will not be accepted. This quotation is subject to change if not accepted in writing within 30 days. TCH is a material supplier, no retainage will be accepted.
**Payment Terms are net 30 days from date of invoice. Your FINANCE CHARGE is computed by a single periodic rate of 1.5% which is an ANNUAL PERCENTAGE RATE of 18% applied to your "previous balance without deducting current payments and/or credits appearing on the face of the statement." Buyer expressly agrees to pay all of Seller's costs, expenses, and attorneys' fees incurred for enforcement of collection of any amount due Seller under this agreement. Venue is Washington County, MN.

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

KRAUS-ANDERSON®
*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 178.00

**Date:** 2/12/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***191 - Gutters at Storm Shelter Dampers***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | Gutters at Storm Shelter Dampers | Rochon Corporation | $2,343.60 |
| | | **Total For Change Order** | **$2,343.60** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 2/16/2024 | 6:29 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Bre Nava 562A882533C1431... **Date:** 2/12/2024 | 1:48 PM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 2/15/2024 | 8:34 PM CS

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

Rochon

# PCO #197

Rochon Corporation
28 2nd St NW, Suite 200
Osseo, Minnesota 55369
Phone: (763) 559-9393
Fax: (763) 559-8101

**Project:** 2219 - North High School Renovations & CTE Center
1500 James Avenue North
Minneapolis, Minnesota 55411

## Prime Contract Potential Change Order #197: CE #273 - Gutters at storm shelter dampers

| | | | |
|---|---|---|---|
| **TO:** | Minneapolis Public Schools | **FROM:** | Rochon Corporation Minnesota<br>28 2nd St NW, Suite 200<br>Osseo, Minnesota 55369 |
| **PCO NUMBER/REVISION:** | 197 / 0 | **CONTRACT:** | 1 - North High School Renovations and CTE Center |
| **REQUEST RECEIVED FROM:** | | **CREATED BY:** | Tim Lindquist **(Rochon Corporation Minnesota)** |
| **STATUS:** | Pending - In Review | **CREATED DATE:** | 1/23/2024 |
| **REFERENCE:** | | **PRIME CONTRACT CHANGE ORDER:** | None |
| **FIELD CHANGE:** | No | | |
| **LOCATION:** | | **ACCOUNTING METHOD:** | Amount Based |
| **SCHEDULE IMPACT:** | | **PAID IN FULL:** | No |
| **EXECUTED:** | No | **SIGNED CHANGE ORDER RECEIVED DATE:** | |
| | | **TOTAL AMOUNT:** | $2,343.60 |

**POTENTIAL CHANGE ORDER TITLE:** CE #273 - Gutters at storm shelter dampers

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*
CE #273 - Gutters at storm shelter dampers
Provide and install aluminum gutters under storm dampers in storm shelter to keep condensation from running down the insterior walls.

**ATTACHMENTS:**
COR#021.pdf

| # | Budget Code | Description | Amount |
|---|---|---|---|
| 1 | 15-500.S HVAC / Controls | Aluminum gutters at storm damper | $2,232.00 |
| | | **Subtotal:** | **$2,232.00** |
| | | Overhead and Profit (5.00% Applies to all line item types.): | $111.60 |
| | | **Grand Total:** | **$2,343.60** |

**LSE Admin (LSE Architects, Inc.)**
1401 Glenwood Ave
Minneapolis, Minnesota 55405

**SIGNATURE** **DATE**

**Minneapolis Public Schools**

**SIGNATURE** **DATE**

**Rochon Corporation Minnesota**
28 2nd St NW, Suite 200
Osseo, Minnesota 55369

**SIGNATURE** **DATE**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# THELEN HEATING & ROOFING INC.

**DATE:** January 16, 2024

**SUBMITTED TO:** Tim Lindquist @ Rochon Corp

**PROJECT:** North High School – MPS – BP2

**PROPOSAL DESCRIPTION:** COR#021

Fab and install aluminum gutters under storm damper in storm shelter.

Labor 15.5 hrs. @ $144 $ 2,232

**QUOTED PRICE:** add $2,232

Proposal By: Nick Haglin

Accepted By: _____

As: _____

Proposal Valid for 30 days

Date: _____

The amount of Performance Bond ( will / will not ) be affected by quote

AN EQUAL OPPORTUNITY EMPLOYER
1717 THIRTEENTH STREET SOUTHEAST • BRAINERD, MN 56401
218 - 829-1491 • FAX 218 - 829 - 2059

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# JOB INVOICE

**Thelen Heating & Roofing, Inc.**
1717 13th Street SE
Brainerd, MN 56401

**218-829-1491**
**Fax 218-829-2059**

3969

TO Rochan Const.
Dave Ness

| PHONE | DATE OF ORDER |
|---|---|
| ORDER TAKEN BY | CUSTOMER'S ORDER NUMBER |

☐ DAY WORK ☐ CONTRACT ☐ EXTRA

JOB NAME/NUMBER

JOB LOCATION

| JOB PHONE | STARTING DATE |
|---|---|

TERMS:

| QTY. | MATERIAL | PRICE | AMOUNT |
|---|---|---|---|
| > | | | |

**DESCRIPTION OF WORK**

Fab and Install Alum. gutters under Storm Damper in Storm Shelter.

**OTHER CHARGES**

TOTAL OTHER

| LABOR | HRS. | RATE | AMOUNT |
|---|---|---|---|
| Tony P | 7 hrs | | |
| Doug K | 7 hrs | | |
| CHAD Y. | ½ | | |

DATE COMPLETED

TOTAL MATERIALS

TOTAL LABOR

TOTAL MATERIALS

TOTAL OTHER

Thank You

TAX

**TOTAL**

Work ordered by

Signature

I hereby acknowledge the satisfactory completion of the above described work.

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

KRAUS-ANDERSON®
*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 179.00

**Date:** 2/12/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***194 - Electrical Room 290***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | CE #279 - Electrical Room 290 | Rochon Corporation | $785.40 |
| | | **Total For Change Order** | **$785.40** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 2/16/2024 | 6:28 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Bre Nava 562A882533C1431... **Date:** 2/12/2024 | 1:48 PM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 2/15/2024 | 8:49 PM CS

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

Rochon

# PCO #201

Rochon Corporation
28 2nd St NW, Suite 200
Osseo, Minnesota 55369
Phone: (763) 559-9393
Fax: (763) 559-8101

**Project:** 2219 - North High School Renovations & CTE Center
1500 James Avenue North
Minneapolis, Minnesota 55411

## Prime Contract Potential Change Order #201: CE #279 - Electrical Room 290

| | | | |
|---|---|---|---|
| **TO:** | Minneapolis Public Schools | **FROM:** | Rochon Corporation Minnesota<br>28 2nd St NW, Suite 200<br>Osseo, Minnesota 55369 |
| **PCO NUMBER/REVISION:** | 201 / 0 | **CONTRACT:** | 1 - North High School Renovations and CTE Center |
| **REQUEST RECEIVED FROM:** | | **CREATED BY:** | Tim Lindquist **(Rochon Corporation Minnesota)** |
| **STATUS:** | Pending - In Review | **CREATED DATE:** | 1/30/2024 |
| **REFERENCE:** | | **PRIME CONTRACT CHANGE ORDER:** | None |
| **FIELD CHANGE:** | No | | |
| **LOCATION:** | | **ACCOUNTING METHOD:** | Amount Based |
| **SCHEDULE IMPACT:** | | **PAID IN FULL:** | No |
| **EXECUTED:** | No | **SIGNED CHANGE ORDER RECEIVED DATE:** | |
| | | **TOTAL AMOUNT:** | $785.40 |

**POTENTIAL CHANGE ORDER TITLE:** CE #279 - Electrical Room 290

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*
CE #279 - Electrical Room 290
Cost to reinstall ceiling light fixtures in Room 290. Was supposed to happen in a future phase, school wants to use as a classroom.

KA Note - LSE to revise future phase to reflect

**ATTACHMENTS:**
MPS North CTE Room 290.pdf

| # | Budget Code | Description | Amount |
|---|---|---|---|
| 1 | 16-000.S Electrical / LV | Room 290 | $748.00 |
| | | **Subtotal:** | **$748.00** |
| | | Overhead and Profit (5.00% Applies to all line item types.): | $37.40 |
| | | **Grand Total:** | **$785.40** |

**LSE Admin (LSE Architects, Inc.)**
1401 Glenwood Ave
Minneapolis, Minnesota 55405

**Minneapolis Public Schools**

**Rochon Corporation Minnesota**
28 2nd St NW, Suite 200
Osseo, Minnesota 55369

| SIGNATURE | DATE | SIGNATURE | DATE | SIGNATURE | DATE |
|---|---|---|---|---|---|

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DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

MIDWEST ELECTRICAL CONSTRUCTION
COMMERCIAL & INDUSTRIAL WIRING

January 28, 2024

Tim Lindquist
Rochon Corporation
28 2nd St. NW Suite 200
Osseo, MN 55369

Re: Minneapolis North High School CTE Room 290

Tim,

Below is our response to provide the electrical related to the new ceiling installation in room 290:

| | |
|---|---|
| Labor: 4 hours @ $120.00 per hour: | $480.00 |
| Labor: 2 hours @ $90.00 per hour: | $180.00 |
| Materials: | $20.00 |
| Mark-up: | $68.00 |
| Total: | $748.00 |

Our total for the above is *$748.00.*

Thank you.

Sincerely,

Brian Hunt

3825 LAKE ELMO AVENUE NORTH, SUITE A • LAKE ELMO, MN 55042
Phone: (651) 773-1287 • Fax: (651) 773-1288
E-Mail: INFO@MIDWEST-ELECTRICAL.NET

# Midwest Electrical Construction
# ADDITIONAL WORK AUTHORIZATION

| | | | |
|---|---|---|---|
| OWNER'S NAME: MPS North High School | | PHONE | DATE: 12-21-2024. |
| STREET | | JOB NAME | JOB NUMBER |
| CITY | STATE | STREET | |
| EXISTING CONTRACT NO. | DATE OF EXISTING CONTRACT | CITY | STATE |

We hereby agree to the specified changes and charges listed below:

Recharge Conduits, Install Lights, Install Ceiling Projectors & Install Audio enhancement speakers in Room 290 Due to new ceiling install.

Craig N- 2
Benf- 2
SamL- 2

Misc Anchors & wire nuts-

ADDITIONAL CHARGE FOR ABOVE WORK IS: $ _____

Payment to be made as follows: _____

**Owner**

Above additional work to be performed under same conditions as specified in original contract unless otherwise stipulated.

Authorized Signature _____ (OWNER SIGN HERE) Date _____ 19 _____

**Contractor**

We hereby agree to furnish labor and materials - complete in accordance with the above specifications, at above stated prices.

Authorized Signature Scott Foxton (CONTRACTOR SIGN HERE) 612-476-3787 Date 24 JAN 19 24

CHANGE ORDER NO. _____

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DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

KRAUS-ANDERSON®
*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 180.00

**Date:** 2/12/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***197 - LSE PR #102 - Power to Scoreboards and Shot Clocks***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | GC per PR #102 | Rochon Corporation | $11,596.20 |
| | | **Total For Change Order** | **$11,596.20** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 2/16/2024 | 6:24 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Bre Nava 562A882533C1431... **Date:** 2/12/2024 | 1:49 PM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 2/15/2024 | 9:02 PM CS

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

Rochon

# PCO #199

Rochon Corporation
28 2nd St NW, Suite 200
Osseo, Minnesota 55369
Phone: (763) 559-9393
Fax: (763) 559-8101

**Project:** 2219 - North High School Renovations & CTE Center
1500 James Avenue North
Minneapolis, Minnesota 55411

## Prime Contract Potential Change Order #199: CE #277 - Electrical for scoreboards and shot clocks

| | | | |
|---|---|---|---|
| **TO:** | Minneapolis Public Schools | **FROM:** | Rochon Corporation Minnesota<br>28 2nd St NW, Suite 200<br>Osseo, Minnesota 55369 |
| **PCO NUMBER/REVISION:** | 199 / 0 | **CONTRACT:** | 1 - North High School Renovations and CTE Center |
| **REQUEST RECEIVED FROM:** | | **CREATED BY:** | Tim Lindquist **(Rochon Corporation Minnesota)** |
| **STATUS:** | Pending - In Review | **CREATED DATE:** | 1/29/2024 |
| **REFERENCE:** | | **PRIME CONTRACT CHANGE ORDER:** | None |
| **FIELD CHANGE:** | No | | |
| **LOCATION:** | | **ACCOUNTING METHOD:** | Amount Based |
| **SCHEDULE IMPACT:** | | **PAID IN FULL:** | No |
| **EXECUTED:** | No | **SIGNED CHANGE ORDER RECEIVED DATE:** | |
| | | **TOTAL AMOUNT:** | $11,596.20 |

**POTENTIAL CHANGE ORDER TITLE:** CE #277 - Electrical for scoreboards and shot clocks

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*
CE #277 - Electrical for scoreboards and shot clocks
Electrical power for owner provided score boards and shot clocks for the storm shelter/gym.

**ATTACHMENTS:**
MPS North CTE Scoreboards.pdf

| # | Budget Code | Description | Amount |
|---|---|---|---|
| 1 | 16-000.S Electrical / LV | Electrical | $11,044.00 |
| | | **Subtotal:** | **$11,044.00** |
| | | Overhead and Profit (5.00% Applies to all line item types.): | $552.20 |
| | | **Grand Total:** | **$11,596.20** |

**LSE Admin (LSE Architects, Inc.)**
1401 Glenwood Ave
Minneapolis, Minnesota 55405

**SIGNATURE** **DATE**

**Minneapolis Public Schools**

**SIGNATURE** **DATE**

**Rochon Corporation Minnesota**
28 2nd St NW, Suite 200
Osseo, Minnesota 55369

**SIGNATURE** **DATE**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

MIDWEST ELECTRICAL CONSTRUCTION
COMMERCIAL & INDUSTRIAL WIRING

January 28, 2024

Tim Lindquist
Rochon Corporation
28 2nd St. NW Suite 200
Osseo, MN 55369

Re: Minneapolis North High School CTE Scoreboards and Shot Clocks

Tim,

Below is our response to provide the electrical requirements for the above as discussed:

| | |
|---|---|
| Labor: 64 hours @ $120.00 per hour: | $7680.00 |
| Materials: | $740.00 |
| Man-lift rental: | $1620.00 |
| Mark-up: | $1004.00 |
| Total: | $11044.00 |

Our total for the above is *$11,044.00.*

Thank you.

Sincerely,

Brian Hunt

3825 LAKE ELMO AVENUE NORTH, SUITE A • LAKE ELMO, MN 55042
Phone: (651) 773-1287 • Fax: (651) 773-1288
E-Mail: INFO@MIDWEST-ELECTRICAL.NET

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

KRAUS-ANDERSON®
*Construction Company*

**501 South Eighth Street**
**Minneapolis, MN 55404**

# Request For Proposal

| | | | |
|---|---|---|---|
| Project: | 2210222-02<br>MPS - North High School Renovations & CTE OP#22-2232<br>1500 James Avenue<br>Minneapolis, MN 55411 | PCO #:<br><br><br>Date: | 197<br><br><br>02/01/2024 |
| To: | Dustin Kempf, Kraus-Anderson Construction Company<br>Bre Nava, Kraus-Anderson Construction Company<br>Curtis Hartog, Mpls Public Schools Special School Dist #1<br>Paul Braton, Rochon Corporation<br>Tim Lindquist, Rochon Corporation<br>Mariaha Dean, Eden Resources<br>Natasha Brown, Eden Resources<br>Joseph Grant, Eden Resources<br>Terry Coleman, Kraus-Anderson Construction Company | | |

Please provide a cost breakdown in accordance with the Contract Documents and a Summary for the Change described herein and on the attachments (if any) listed. All responses are required within seven (7) days.

This is not an authorization to proceed with the work described herein unless and until approved by the Owner. On approval, this change will be included in a Change Order, which will provide the formal Contract Change.

**DESCRIPTION OF PROPOSAL:**

Please provide a cost estimate per the attached PR #102 regarding Power to Owner provided additional scoreboard and shot clock.

Attachments: LSE PR #102 dated 1/29/24

☐ We have reviewed the PCO and acknowledge that it is a “no change” item and does not affect our completion date.

Signed By: _____ Date: _____

Company Name: _____

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# AIA® Document G709™ – 2018

## *Proposal Request*

**PROJECT:** *(name and address)*
North High School
Special School District No. 1
1500 James Avenue
Minneapolis, MN 55411

**CONTRACT INFORMATION:**
Contract For: General Construction
Date: 5/31/2022

Architect's Project Number: 21.1002.01
Proposal Request Number: 102
Proposal Request Date: 1/29/2024

**OWNER:** *(name and address)*
Minneapolis Public Schools
SSD 1
1250 West Broadway Avenue
Minneapolis, MN 55411

**ARCHITECT:** *(name and address)*
LSE Architects, Inc.
1401 Glenwood Ave
Minneapolis, MN 55405

**CONTRACTOR:** *(name and address)*
Kraus-Anderson Construction
501 South 8th Street
Minneapolis, MN 55404

The Owner requests an itemized proposal for changes to the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. The Contractor shall submit this proposal within Fourteen (14) days or notify the Architect in writing of the anticipated date of submission.
*(Insert a detailed description of the proposed modifications to the Contract Documents and, if applicable, attach or reference specific exhibits.)*

**BP1 – Power To Owner Provided Additional Scoreboard and Shot Clocks**

**Provide pricing for bringing power to the additional scoreboard and 2 shot clocks already installed by the Owner in the new gym. Need to confirm with the Owner if the data connections are wireless as shown by the antenna visible on the scoreboards. If not wireless connection between the scoreboard and shot clocks then additional data will need to be run also.**
**Refer to attached photos documenting the location of proposed electrical as coordinated on site with the electrical foreman. Confirmed that there is capacity in the panelboard for the added items.**

**Provide detailed breakdown of additions and/or credits per project manual.**

**Attachments:**
**BP1 - photo documentation**

**THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE, OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.**

**REQUESTED BY THE ARCHITECT:**

Deborah Bauknight

Deborah Bauknight, PM/Contract Admin
**PRINTED NAME AND TITLE**

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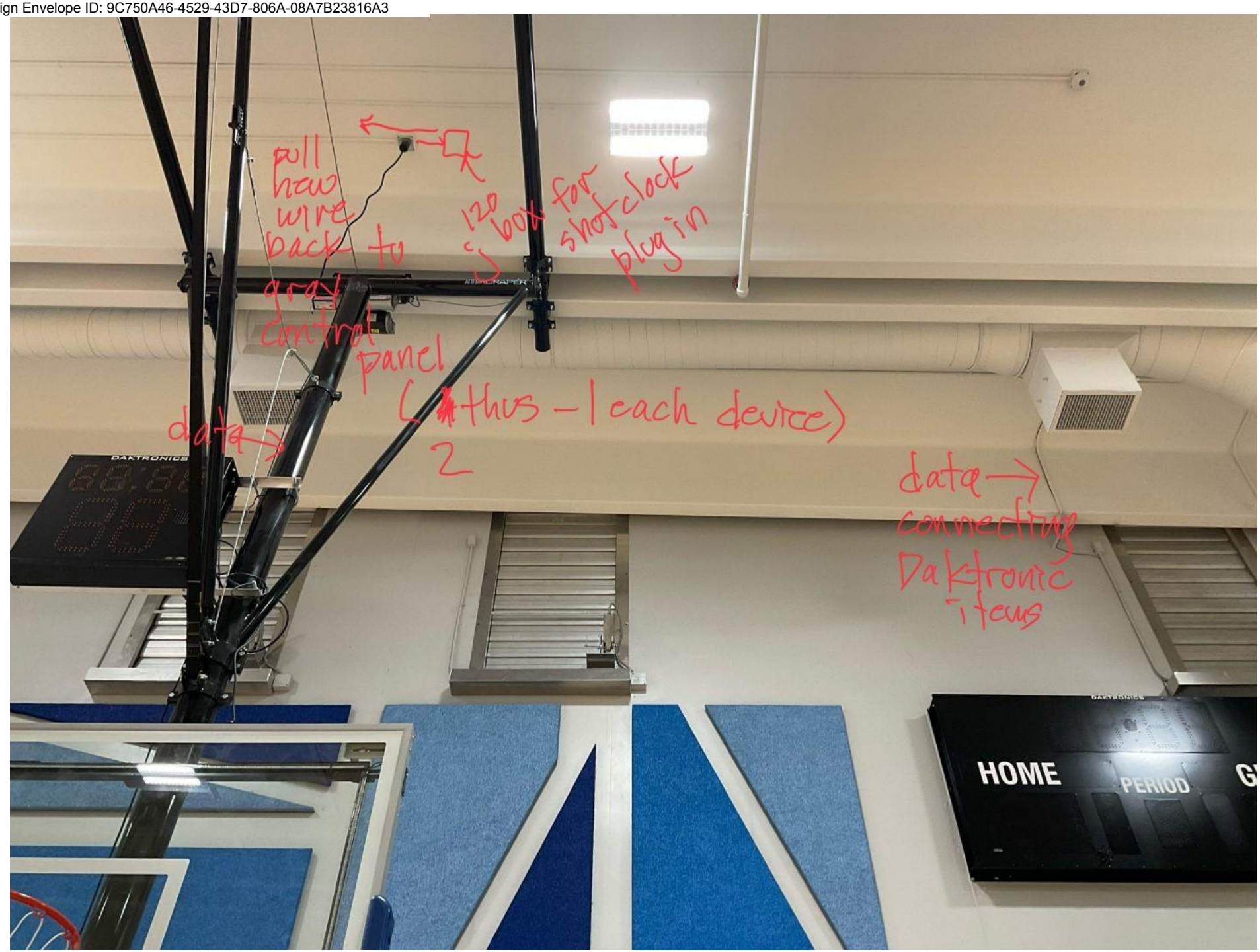
**User Notes:** (3B9ADA5A)

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

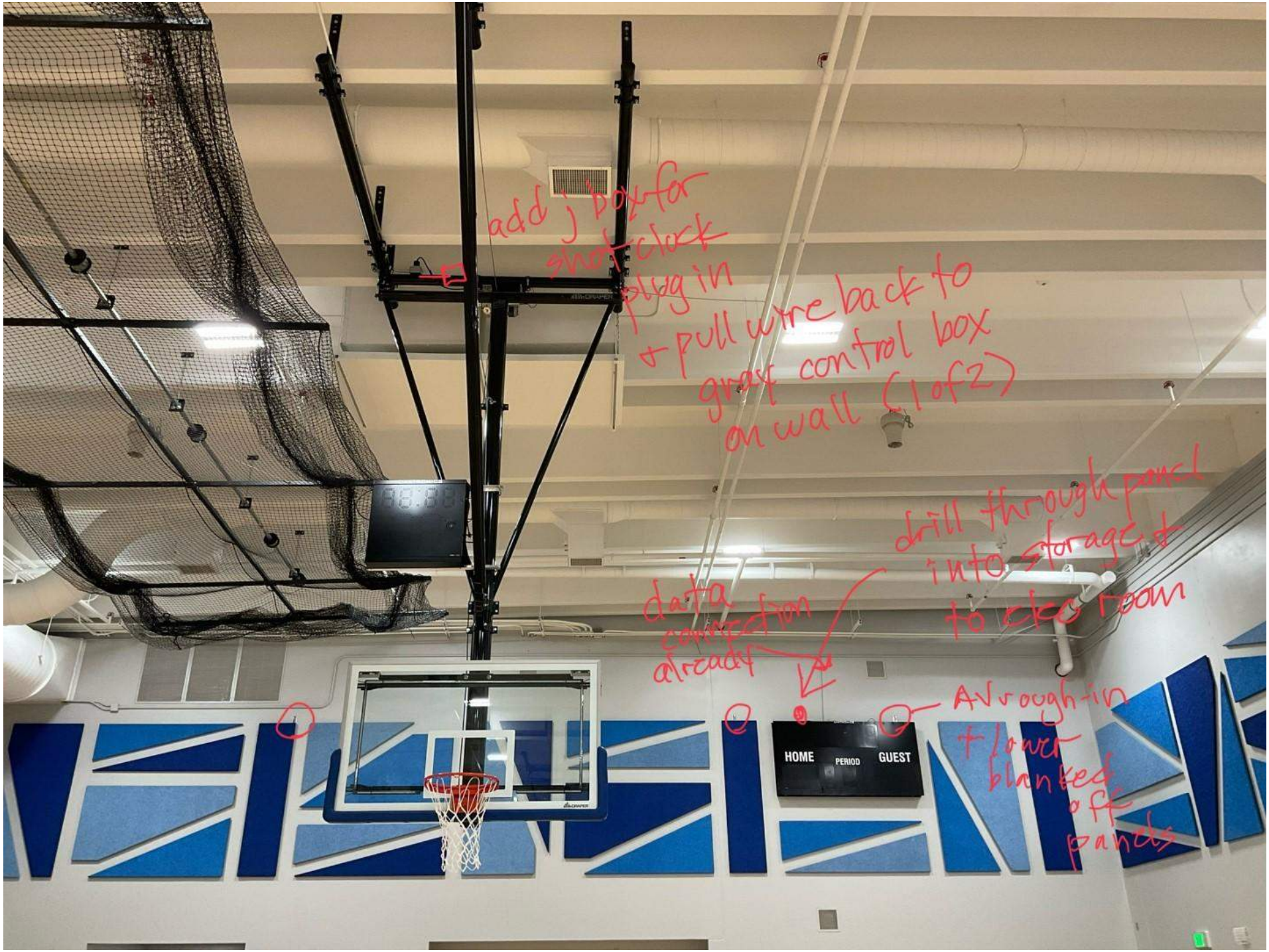
**Existing scoreboard on East Wall**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3




**Existing scoreboard**
**on East Wall with shot clock on bball hoop**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3




**Additional scoreboard**
**on West Wall with shot clock on bball hoop**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

KRAUS-ANDERSON®
*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 181.00

**Date:** 2/12/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO #*** ***198 - CR 206 Build up floors at Nanowalls***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 1 | CR 206 Build up floors at Nanowalls | Rochon Corporation | $4,751.25 |
| | | **Total For Change Order** | **$4,751.25** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 2/16/2024 | 6:26 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Bre Nava 562A882533C1431... **Date:** 2/12/2024 | 1:49 PM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 2/15/2024 | 8:59 PM CS

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

Rochon

# PCO #206

Rochon Corporation
28 2nd St NW, Suite 200
Osseo, Minnesota 55369
Phone: (763) 559-9393
Fax: (763) 559-8101

**Project:** 2219 - North High School Renovations & CTE Center
1500 James Avenue North
Minneapolis, Minnesota 55411

## Prime Contract Potential Change Order #206: CE #285 - Build up at Nanowall doors

| | | | |
|---|---|---|---|
| **TO:** | Minneapolis Public Schools | **FROM:** | Rochon Corporation Minnesota<br>28 2nd St NW, Suite 200<br>Osseo, Minnesota 55369 |
| **PCO NUMBER/REVISION:** | 206 / 0 | **CONTRACT:** | 1 - North High School Renovations and CTE Center |
| **REQUEST RECEIVED FROM:** | | **CREATED BY:** | Tim Lindquist **(Rochon Corporation Minnesota)** |
| **STATUS:** | Pending - In Review | **CREATED DATE:** | 2/5/2024 |
| **REFERENCE:** | | **PRIME CONTRACT CHANGE ORDER:** | None |
| **FIELD CHANGE:** | No | | |
| **LOCATION:** | | **ACCOUNTING METHOD:** | Amount Based |
| **SCHEDULE IMPACT:** | | **PAID IN FULL:** | No |
| **EXECUTED:** | No | **SIGNED CHANGE ORDER RECEIVED DATE:** | |
| | | **TOTAL AMOUNT:** | $4,751.25 |

**POTENTIAL CHANGE ORDER TITLE:** CE #285 - Build up at Nanowall doors

**CHANGE REASON:** Design Development

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*
CE #285 - Build up at Nanowall doors
A meeting was held on site with CFS, Rochon, KA, and LSE. It was discussed that due to the various thicknesses and variations of the floor levelness, the floor would need to be ramped up to the correct height of the Nanowall thresholds to prevent trip hazards.

**ATTACHMENTS:**
Added prep for Nano walls-Nano Doors - June 2023.pdf

| # | Budget Code | Description | Amount |
|---|---|---|---|
| 1 | 09-650.S Flooring | Flooring floor prep | $4,525.00 |
| | | **Subtotal:** | **$4,525.00** |
| | | Overhead and Profit (5.00% Applies to all line item types.): | $226.25 |
| | | **Grand Total:** | **$4,751.25** |

**LSE Admin (LSE Architects, Inc.)**
1401 Glenwood Ave
Minneapolis, Minnesota 55405

**SIGNATURE** **DATE**

**Minneapolis Public Schools**

**SIGNATURE** **DATE**

**Rochon Corporation Minnesota**
28 2nd St NW, Suite 200
Osseo, Minnesota 55369

**SIGNATURE** **DATE**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

**Date:** 6/29/2023

**To:** PAUL BRATON

**Customer PO:**
CONTRACT

cfs
INTERIORS & FLOORING
940 Apollo Road, Suite 110
Eagan , MN 55121
Ph : (651) 681-8100 Fax: (651) 681-1385

# Change Order Request

**Job No:** 116947
**Request #:** 5
**CO #:** 0

**Invoice To:**
ROCHON CORPORATION
28 2ND ST NW # 200
OSSEO, MN 553691002

**Project:**
MPLS - NORTH HIGH SCHOOL 6.3.2022
1500 JAMES AVE N
MINNEAPOLIS, MN 55411

PAUL BRATON
Phone: (763) 235-3816
Cell: (612) 490-5663

| From: | Project Manager: | Estimator: |
|---|---|---|
| Richard J Battis | Rivera, Cecilia | |

***ADDITIONAL PREP - BUILD UP TO NANO DOORS/WALLS***

| ADD | | |
|---|---|---|
| 1 | 6-6-23 - H112 (DRONE ROOM ) | $850.00 |
| 2 | 6-12-23 H100D COMMONS | $735.00 |
| 3 | 6-14-23 & 6-15-23 - H142, H144, H148 | $1,510.00 |
| 4 | 6-23-23 - 6-27-23 H156 & H152 | $1,430.00 |

***Total ADD*** **$4,525.00**

**Total This Option - Tax Included :** **$4,525.00**

***SALESMAN'S SIGNATURE*** RICK BATTIS Digitally signed by Rick Battis DN: C=US, E=rbattis@cfs-floors.com, O="CFS Interiors and Flooring", CN=Rick Battis Date: 2023.11.21 13:41:42 -06'00'

***Approximate Installation Start Date:***

***CUSTOMER'S AUTHORIZATION*** _____

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# Extra Work Authorization

cfs
INTERIORS · FLOORING
940 Apollo Road, Suite 110
Eagan , MN 55121
Ph.: (651) 681-8100 Fax: (651) 681-1385
COMMERCIAL FLOORING SERVICES, LLC
940 APOLLO ROAD
SUITE 110
EAGAN, MN 551212154

*Contact:* PAUL BRATON
Phone: (763) 235-3816-
Cell: (612) 490-5663-
Pager:
Fax:

***Manager:*** Richard Battis

***Job Name:***
NORTH HIGH SCHOOL 6.3.2022
1500 JAMES AVE N
MINNEAPOLIS, MN 55411

***Contact:***

| *Install Date:* | *Promised Inst.* | *Tentative Inst.* | *Bid #:* | *Job No.* |
|---|---|---|---|---|
| 6/6/23 | 4/1/2023 | | 46101 | 116947 |

**FULL DESCRIPTION OF THE RECOMMENDED WORK TO BE PERFORMED AND MATERIALS USED:**

H112 (Drone Room) 2 Hours grinding Peaked Concrete.
5 Hours and 5-10lb. Bags of Ardex Feather Finish
to Build up to Nano walls

Total 7 Hours
5 Bags Ardex

**TIME EXPENDED (OPTIONAL):**

**RATES (OPTIONAL):**

**COSTS INCURRED (OPTIONAL):**

**PLEASE SIGN ONE OF THE OPTIONS BELOW:**

>>>> I AUTHORIZE THE EXTRA WORK TO BE PERFORMED AS OUTLINED ABOVE. I UNDERSTAND THAT ADDITIONAL COSTS WILL OCCUR AND A CHANGE ORDER WILL BE PROVIDED.

CLIENT PRINTED NAME: ✕ Stephanie DeDalto - Rochon
CLIENT SIGNATURE:
POSITION:
DATE:

>>>> I DO NOT AUTHORIZE THE EXTRA WORK OUTLINED ABOVE. SIGNING THIS DOCUMENT SPECIFICALLY RELEASES COMMERCIAL FLOORING SERVICES. LLC IT'S AGENTS AND OR EMPLOYEES FROM LIABILITY OR DAMAGES INCURRED OR SUSTAINED AS A RESULT OF NOT AUTHORIZING THE ABOVE RECOMMENDED WORK.

CLIENT PRINTED NAME:
CLIENT SIGNATURE:
POSITION:
DATE:

>>>> I HAVE COMPLETED THE ABOVE.

INSTALLER PRINTED NAME: Rod Karnoff
INSTALLER SIGNATURE: Rod Karnoff
POSITION: Flooring - Foreman
DATE: 6-12-23

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# Extra Work Authorization

cfs
INTERIORS · FLOORING
940 Apollo Road, Suite 110
Eagan , MN 55121
Ph.: (651) 681-8100 Fax: (651) 681-1385
COMMERCIAL FLOORING SERVICES, LLC
940 APOLLO ROAD
SUITE 110
EAGAN, MN 551212154

*Contact:* PAUL BRATON
Phone: (763) 235-3816-
Cell: (612) 490-5663-
Pager:
Fax:

***Manager:*** Richard Battis

***Job Name:***
NORTH HIGH SCHOOL 6.3.2022
1500 JAMES AVE N
MINNEAPOLIS, MN 55411

***Contact:***

| *Install Date:* | *Promised Inst.* | *Tentative Inst.* | *Bid #:* | *Job No.* |
|---|---|---|---|---|
| 6-12-23 | 4/1/2023 | | 46101 | 116947 |

**FULL DESCRIPTION OF THE RECOMMENDED WORK TO BE PERFORMED AND MATERIALS USED:**

H100 D Commons – 2½ hours grinding High Spots on Plumbing Trenches. 4 hours and 2 Bags of Ardex feather Finish to Build up to Nano walls. Total 6½ Hours 2 Bags Ardex

**TIME EXPENDED (OPTIONAL):**

**RATES (OPTIONAL):**

**COSTS INCURRED (OPTIONAL):**

**PLEASE SIGN ONE OF THE OPTIONS BELOW:**

>>>> I AUTHORIZE THE EXTRA WORK TO BE PERFORMED AS OUTLINED ABOVE. I UNDERSTAND THAT ADDITIONAL COSTS WILL OCCUR AND A CHANGE ORDER WILL BE PROVIDED.

CLIENT PRINTED NAME: X Stephen D DeCo - Rachon
CLIENT SIGNATURE:
POSITION:
DATE:

>>>> I DO NOT AUTHORIZE THE EXTRA WORK OUTLINED ABOVE. SIGNING THIS DOCUMENT SPECIFICALLY RELEASES COMMERCIAL FLOORING SERVICES. LLC IT'S AGENTS AND OR EMPLOYEES FROM LIABILITY OR DAMAGES INCURRED OR SUSTAINED AS A RESULT OF NOT AUTHORIZING THE ABOVE RECOMMENDED WORK.

CLIENT PRINTED NAME:
CLIENT SIGNATURE:
POSITION:
DATE:

>>>> I HAVE COMPLETED THE ABOVE.

INSTALLER PRINTED NAME: Rod Kanpff
INSTALLER SIGNATURE: Rod Kanpff
POSITION: Flooring - Foreman
DATE: 6-12-23

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# Extra Work Authorization

cfs
INTERIORS · FLOORING
940 Apollo Road, Suite 110
Eagan , MN 55121
Ph.: (651) 681-8100 Fax: (651) 681-1385
COMMERCIAL FLOORING SERVICES, LLC
940 APOLLO ROAD
SUITE 110
EAGAN, MN 551212154

*Contact:* PAUL BRATON
Phone: (763) 235-3816-
Cell: (612) 490-5663-
Pager:
Fax:

***Manager:*** Richard Battis

***Job Name:***
NORTH HIGH SCHOOL 6.3.2022
1500 JAMES AVE N
MINNEAPOLIS, MN 55411

***Contact:***

| *Install Date:* | *Promised Inst.* | *Tentative Inst.* | *Bid #:* | *Job No.* |
|---|---|---|---|---|
| 6/14 - 6/15/23 | 4/1/2023 | | 46101 | 116947 |

**FULL DESCRIPTION OF THE RECOMMENDED WORK TO BE PERFORMED AND MATERIALS USED:**

H142, H144, H148 8 Hours and 6 - 10lb Bags of ~~Ardex Feather finish~~ to Build up to Nano walls.
H100D 4 hours and 5 bags Ardex to leval of Plumbing trenches

total - 12 Hours
11 Bags of Ardex

**TIME EXPENDED (OPTIONAL):**

**RATES (OPTIONAL):**

**COSTS INCURRED (OPTIONAL):**

**PLEASE SIGN ONE OF THE OPTIONS BELOW:**

>>>> I AUTHORIZE THE EXTRA WORK TO BE PERFORMED AS OUTLINED ABOVE. I UNDERSTAND THAT ADDITIONAL COSTS WILL OCCUR AND A CHANGE ORDER WILL BE PROVIDED.

CLIENT PRINTED NAME: Mark A DeCou - Rochon
CLIENT SIGNATURE:
POSITION:
DATE:

>>>> I DO NOT AUTHORIZE THE EXTRA WORK OUTLINED ABOVE. SIGNING THIS DOCUMENT SPECIFICALLY RELEASES COMMERCIAL FLOORING SERVICES, LLC IT'S AGENTS AND OR EMPLOYEES FROM LIABILITY OR DAMAGES INCURRED OR SUSTAINED AS A RESULT OF NOT AUTHORIZING THE ABOVE RECOMMENDED WORK.

CLIENT PRINTED NAME:
CLIENT SIGNATURE:
POSITION:
DATE:

>>>> I HAVE COMPLETED THE ABOVE.

INSTALLER PRINTED NAME: Rod Kampff
INSTALLER SIGNATURE: Rod Kampff
POSITION: Flooring Foreman
DATE: 6-15-23

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# Extra Work Authorization

cfs
INTERIORS · FLOORING
940 Apollo Road, Suite 110
Eagan , MN 55121
Ph.: (651) 681-8100 Fax: (651) 681-1385
COMMERCIAL FLOORING SERVICES, LLC
940 APOLLO ROAD
SUITE 110
EAGAN, MN 551212154

*Contact:* PAUL BRATON
Phone: (763) 235-3816-
Cell: (612) 490-5663-
Pager:
Fax:

*Manager:* Richard Battis

*Job Name:*
NORTH HIGH SCHOOL 6.3.2022
1500 JAMES AVE N
MINNEAPOLIS, MN 55411

*Contact:*

| *Install Date:* | *Promised Inst.* | *Tentative Inst.* | *Bid #:* | *Job No.* |
|---|---|---|---|---|
| 6-23, 6-26, 6-27 | 4/1/2023 | | 46101 | 116947 |

**FULL DESCRIPTION OF THE RECOMMENDED WORK TO BE PERFORMED AND MATERIALS USED:**

H156, H152 = H156 Build up Nano doors, leval off different Heights in Concrete. H152, Grind peaks in Concrete, level off High Spots. Product Used - Ardex Feather Finish - 10lb/Bag

Total - 11 Hours
- 12 Bags Ardex

**TIME EXPENDED (OPTIONAL):**

**RATES (OPTIONAL):**

**COSTS INCURRED (OPTIONAL):**

**PLEASE SIGN ONE OF THE OPTIONS BELOW:**

>>>> I AUTHORIZE THE EXTRA WORK TO BE PERFORMED AS OUTLINED ABOVE. I UNDERSTAND THAT ADDITIONAL COSTS WILL OCCUR AND A CHANGE ORDER WILL BE PROVIDED.

CLIENT PRINTED NAME: X Stephen Dalla Rochan Corp.com
CLIENT SIGNATURE:
POSITION:
DATE:

>>>> I DO NOT AUTHORIZE THE EXTRA WORK OUTLINED ABOVE. SIGNING THIS DOCUMENT SPECIFICALLY RELEASES COMMERCIAL FLOORING SERVICES. LLC IT'S AGENTS AND OR EMPLOYEES FROM LIABILITY OR DAMAGES INCURRED OR SUSTAINED AS A RESULT OF NOT AUTHORIZING THE ABOVE RECOMMENDED WORK.

CLIENT PRINTED NAME:
CLIENT SIGNATURE:
POSITION:
DATE:

>>>> I HAVE COMPLETED THE ABOVE.

INSTALLER PRINTED NAME: Rod Kampff
INSTALLER SIGNATURE:
POSITION: Flooring Foreman
DATE: 6-27-23

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

KRAUS-ANDERSON®
*Construction Company*

# Change Order Request

**Project:** 2210222-02
MPS - North High School Renovations & CTE OP#22-2232
1500 James Avenue
Minneapolis, MN 55411

**COR #** 175.00

**Date:** 2/9/2024

**To: Owner** Mpls Public Schools Special School Dist #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**From:** Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

***PCO # 82.3 - LSE PR #41 - Added KBEM Equipment (479 Main Studio)***

| Item # | Description | Vendor | Amount |
|---|---|---|---|
| 3 | GC per PR #41 - Equipment & Furniture (479 Main Studio) | Rochon Corporation | $757,270.69 |
| | | **Total For Change Order** | **$757,270.69** |

**Approved By:** Mpls Public Schools Special School Dist #1 **Signed:** DocuSigned by: Curtis Hartog 53601F68E644483... **Date:** 2/16/2024 | 8:53 AM PS

**Submitted By:** Kraus-Anderson Construction Company **Signed:** DocuSigned by: Bre Nava 562A882533C1431... **Date:** 2/9/2024 | 11:47 AM CS

**Accepted By:** LSE Architects, Inc. **Signed:** DocuSigned by: Deborah Bauknight F65D4C431D924FB... **Date:** 2/14/2024 | 8:54 PM CS

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

Rochon

# PCO #205

Rochon Corporation
28 2nd St NW, Suite 200
Osseo, Minnesota 55369
Phone: (763) 559-9393
Fax: (763) 559-8101

**Project:** 2219 - North High School Renovations & CTE Center
1500 James Avenue North
Minneapolis, Minnesota 55411

## Prime Contract Potential Change Order #205: CE #284 - KBEM Equipment (KBEM Facilty Studio)

| | | | |
|---|---|---|---|
| **TO:** | Minneapolis Public Schools | **FROM:** | Rochon Corporation Minnesota<br>28 2nd St NW, Suite 200<br>Osseo, Minnesota 55369 |
| **PCO NUMBER/REVISION:** | 205 / 0 | **CONTRACT:** | 1 - North High School Renovations and CTE Center |
| **REQUEST RECEIVED FROM:** | | **CREATED BY:** | Tim Lindquist **(Rochon Corporation Minnesota)** |
| **STATUS:** | Pending - In Review | **CREATED DATE:** | 2/5/2024 |
| **REFERENCE:** | | **PRIME CONTRACT CHANGE ORDER:** | None |
| **FIELD CHANGE:** | No | | |
| **LOCATION:** | | **ACCOUNTING METHOD:** | Amount Based |
| **SCHEDULE IMPACT:** | | **PAID IN FULL:** | No |
| **EXECUTED:** | No | **SIGNED CHANGE ORDER RECEIVED DATE:** | |
| | | **TOTAL AMOUNT:** | $757,270.69 |

**POTENTIAL CHANGE ORDER TITLE:** CE #284 - KBEM Equipment (KBEM Facilty Studio)

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*
CE #284 - KBEM Equipment (KBEM Facilty Studio)
KA PCO 82, PR 41 part 2 (PME) Main KBEM Studio
KBEM equipment and furniture for the main studio.

**ATTACHMENTS:**
Quotation_479_Rochon_KBEM.pdf

| # | Budget Code | Description | Amount |
|---|---|---|---|
| 1 | 01-199.O Miscellaneous | PME (Main studio) | $721,210.18 |
| | | **Subtotal:** | **$721,210.18** |
| | | Overhead and Profit (5.00% Applies to all line item types.): | $36,060.51 |
| | | **Grand Total:** | **$757,270.69** |

**LSE Admin (LSE Architects, Inc.)**
1401 Glenwood Ave
Minneapolis, Minnesota 55405

**SIGNATURE** **DATE**

**Minneapolis Public Schools**

**SIGNATURE** **DATE**

**Rochon Corporation Minnesota**
28 2nd St NW, Suite 200
Osseo, Minnesota 55369

**SIGNATURE** **DATE**

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

# Quotation

From

**Public Media Engineering, LLC. / PME**
407 N Elizabeth St.
Suite 102
Chicago, IL. 60642
312-757-5200

Quotation Id **479**
Issue Date 11/10/2023
Subject KBEM Facility Construction and Integration; Telos Axia Broadcast Hardware; KBEM Only with MPS Voices Studio

Quotation For

**Rochon**
28 2nd Street NW, Suite 200
Osseo, MN 55369

| Item Type | Description | Quantity | Unit Price | Amount |
|---|---|---|---|---|
| Product | **H168M CR Studio 1** | 1.00 | $0.00 | **$0.00** * |
| Product | **2001-00552-000-U \| Quasar table-top frame 4.5U, w/1 Power Supply**<br>Quasar Frames constitute the hardware backbone for all Quasar Family consoles and are available in sizes from 2.5U to 7.5U. These sizes offer support for the combination of a Master Module with 4 up to 24 faders respectively. Quasar XR offers support for up to 64 faders through multiple linked frames and Quasar SR offers an upper limit of support to 32 faders. Quasar Power Supply Unit(s) included with each frame purchase.<br>Width: from 428mm / 16.85” (4 faders + Master) Depth: 580mm / 22.83” Height: 110mm / 4.33” (Table-top frame with rubber feet) | 1.00 | $2,516.00 | **$2,516.00** * |
| Product | **2001-00569-000-U \| Quasar XR-4FAD Module, Motorized** (Factory Installed)<br>Quasar eXtended Functionality 4-Motorized Faders module, 1U wide - (4ch) | 3.00 | $4,316.00 | **$12,948.00** * |
| Product | **2001-00568-000-U \| Quasar MTS-MON Module** (Factory Installed)<br>Quasar Master Touch Screen Monitor module, 1.5U wide - (6ch) | 1.00 | $4,496.00 | **$4,496.00** * |
| Product | **2001-00584-000-U \| Quasar Engine Base** (16 Channel)<br>The Quasar Engine provides bulletproof mixing console signal processing for Quasar surfaces. Each engine is equipped with multiple simultaneous AoIP inputs, outputs, automatic mix-minus feeds, monitor signals, etc., and can provide Input Filters, Dynamics, EQ De-Esser and Automixer for all channels, as well as studio headphone processing and multiple VMix (Virtual Mixer) channels. The third-generation QuasarEngine is a rock-solid appliance based on industrial server-class hardware, it is just one rack unit and comes standard with dual Gigabit Ethernet ports and dual-redundant hot-swap power supplies with automatic switching for complete peace of mind. Auto-sensing power supplies, 90VAC to 240VAC, 50 Hz to 60 Hz. 100 Watts. Rackmount, 1RU | 1.00 | $5,396.00 | **$5,396.00** * |
| Product | **3002-00098-000 \| 16 Channel Engine Expansion license**<br>This license adds 16 Input channels to your Quasar Engine. Add multiple licenses to increase the Engine’s channel count up to 64 inputs, in blocks of 16. | 3.00 | $896.00 | **$2,688.00** * |

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| | | | | |
|---|---|---|---|---|
| Product | **2001-00297-000-U \| Telos Alliance Microphone xNode** Compact 9.5" x 11" second-generation AoIP interface. 16-channel xNode provides 4 mic inputs with switchable Phantom power, with preamp gain adjustable from -74dBu to -19dBu, and 8 mono or 4 stereo balanced line-level outputs for headphone or monitor feeds. Fully AES67 compliant. | 1.00 | $1,996.00 | **$1,996.00** * |
| Product | **2001-00298-000-U \| Telos Alliance Analog xNode** Compact 9.5” x 11” second-generation AoIP interface provides 4 stereo (8 mono) analog inputs and outputs. Fully AES67 compliant. | 2.00 | $1,996.00 | **$3,992.00** * |
| Product | **2001-00299-000-U \| Telos Alliance AES/EBU xNode** Compact 9.5” x 11” second-generation AoIP interface provides 4 stereo AES inputs and outputs. Fully AES67 compliant. | 1.00 | $1,996.00 | **$1,996.00** * |
| Product | **2001-00301-000-U \| Telos Alliance GPIO xNode** Compact 9.5" x 11" second-generation AoIP interface with 6 GPIO ports for control of peripheral devices. | 1.00 | $1,829.00 | **$1,829.00** * |
| Product | **StreamLine Custom Furniture** CR Studio Furniture Solid Surface Top | 1.00 | $15,120.00 | **$15,120.00** * |
| Product | **Titus HPL-BFU-F** Hanging "PLEXIGLAS" Light Fixture BLUE Resting RED Active | 1.00 | $234.72 | **$234.72** * |
| Product | **Henry Engineering SUPERELAY II** SupeRelay II Utility Control Interface | 1.00 | $395.00 | **$395.00** * |
| Product | **Genelec 8030BPM** 5" LF/ 40W & .75" HF/ 40W. ISS™ Power Management. Producer Black Finish | 2.00 | $602.88 | **$1,205.76** * |
| Product | **Yellowtec YT3231** MIKA Fleximount for Genelec | 2.00 | $178.50 | **$357.00** * |
| Product | **Genelec GEN-8000-437B** GENELEC 8000-437B VESA ADAPTER FITS 8000 SPEAKER SERIES | 1.00 | $65.63 | **$65.63** * |
| Product | **Fostek 6301NX** Fostex 6301NX - 4" Active Monitor Speaker 20W D-Class (Single) | 1.00 | $265.16 | **$265.16** * |
| Product | **Fostek EB-6301** Fostex EB-6301 Mount Bracket for 6301N Series Monitor | 1.00 | $40.17 | **$40.17** * |
| Product | **Angry Audio 991030** Headphone Gizmo, 115VAC | 5.00 | $219.00 | **$1,095.00** * |
| Product | **AngryAudio PS-CUBE** DC Cube Power Supply | 2.00 | $35.00 | **$70.00** * |
| Product | **Mackie HM-800** Rack-Mountable, 8-Channel Headphone Amplifier | 1.00 | $193.37 | **$193.37** * |
| Product | **Yellowtec YT3245** MMS Desktop Mounting Kit, includes 2x Cable Clamp and 1x Yellow Spacer | 6.00 | $58.62 | **$351.72** * |
| Product | **Yellowtec YT9100** LITT High Definition Signal Light. LITT 50 Base Controller | 1.00 | $162.75 | **$162.75** * |
| Product | **Yellowtec YT9603** LITT Multicore System Cable (328 ft) | 1.00 | $360.50 | **$360.50** * |
| Product | **Yellowtec YT3243** MIKA 21" MMS Pole for Monitoring/Mic Arm Support | 3.00 | $133.00 | **$399.00** * |
| Product | **Yellowtec YT3235** Mika 7" MSS Pole | 3.00 | $53.37 | **$160.11** * |

DocuSign Envelope ID: 9C750A46-4529-43D7-806A-08A7B23816A3

| | | | | |
|---|---|---|---|---|
| Product | **Yellowtec YT9201** LITT High Definition Signal Light, Color Segment (RED) 50/22 | 1.00 | $0.00 | **$0.00** * |
| Product | **Yellowtec YT9202** LITT High Definition Signal Light, Color Segment (Green) 50/22 | 1.00 | $108.50 | **$108.50** * |
| Product | **Yellowtec YT9204** LITT High Definition Signal Light, Color Segment (White) 50/22 | 1.00 | $126.00 | **$126.00** * |
| Product | **Yellowtec YT3812** m!ka EasyLift Monitor Arm M | 4.00 | $506.63 | **$2,026.52** * |
| Product | **Yellowtec YT3213MK2** Mic Arm to MSS Pole Adapter | 5.00 | $125.13 | **$625.65** * |
| Product | **Yellowtec YT3305** M!KA On-Air Microphone Arm XL Aluminum Max. Length 42.3 Inch (107.5cm) | 1.00 | $559.13 | **$559.13** * |
| Product | **Yellowtec YT3209** MIKA TV Low Profile Mic Arm with On Air Signal LED | 3.00 | $524.13 | **$1,572.39** * |
| Product | **Henry Engineering MIKEALERT** Henry ENG MIKEALERT Henry Mike Alert Interface | 2.00 | $322.29 | **$644.58** * |
| Product | **Henry Engineering RMS** Henry ENG RMS Henry Rack Kit | 2.00 | $87.50 | **$175.00** * |
| Product | **NotaBotYet Y15-R01-3** Interface for Yellowtec Litt Signaling Device | 1.00 | $106.17 | **$106.17** * |
| Product | **Neumann U87** Neumann U 87 Ai Set Large-Diaphragm Condenser Microphone - Nickel | 1.00 | $3,695.00 | **$3,695.00** * |
| Product | **Neumann TLM 103** Neumann TLM 103 Large-diaphragm Condenser Microphone - Nickel | 3.00 | $1,195.00 | **$3,585.00** * |
| Product | **Great River MP2NV** 2-channel Mic/Instrument Preamp with 60dB Gain and Transformer-balanced Output | 2.00 | $2,086.88 | **$4,173.76** * |
| Product | **Dell U2419H** Dell UltraSharp 24 Monitor - U2419H<br>23.8" In-Plane Switching (IPS) Panel<br>DisplayPort & HDMI Inputs<br>1920 x 1080 Resolution<br>1000:1 Static Contrast Ratio | 4.00 | $328.90 | **$1,315.60** * |
| Product | **Dell EDIT PC** Dell OptiPlex 7010 Micro Plus Form Factor Desktop Computer<br>13th Gen Intel Core i7 Processor<br>16GB DDR5 RAM<br>512GB M.2 PCIe SSD<br>Integrated Intel UHD 770 Graphics<br>3 x DisplayPort 1.4a Video Outputs<br>USB 3.2 Gen 1, Gen 2, Gen 2x2 Ports<br>Wi-Fi 6E \| Bluetooth \| GbE LAN<br>Wireless Mouse & Keyboard Included<br>Mountable Design<br>Windows 11 Pro | 1.00 | $1,249.00 | **$1,249.00** * |
| Product | **Telos Axia 300100017100** Livewire Axia Driver | 2.00 | $221.00 | **$442.00** * |
| Product | **Samsung UN50AU8000FXZA** Samsung 50" AU8000 Black Crystal UHD 4K Smart TV | 2.00 | $492.79 | **$985.58** * |
| Product | Chief TV Mounts Chief LTM1U Fusion Series Tilting Landscape Wall Mount for 37 to 63" Displays | 2.00 | $337.70 | **$675.40** * |

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| Product | **ESE ES-993 U/NTP-C/BLUE/POE** ESE Clock | 1.00 | $656.25 | **$656.25** * |
| Product | **Paravel Wall Time** | 1.00 | $425.00 | **$425.00** * |
| Product | ATS Acoustic Panels<br>This panel is 2 inches thick. [?]<br>Average weight per panel: 12 lbs<br>Core material is Roxul AFB mineral wool, a highly effective sound absorber (NRC 0.95 out of 1). Higher NRC means fewer panels are needed to treat your space.<br>Built to last with a solid wood internal frame that protects edges and corners from dents and damage.<br>1/4-inch wood back panel for easy and secure installation without glue.<br>Attractive, textured cover fabric is 100% jute. Available in a range of colors to match your style.<br>Combine sizes and colors in creative patterns for a unique and visually impressive look.<br>Furniture-quality design and workmanship. Handcrafted in the USA. | 30.00 | $92.87 | **$2,786.10** * |
| Product | **Cisco C1000-16FP-2G-L** Cisco C1000-16FP-2G-L 16 Ports - Manageable - 2 Layer Supported - Modular - 2 SFP Slots - Twisted Pair, Optical Fiber - Rack-mountable | 1.00 | $1,473.95 | **$1,473.95** * |
| Product | **H168N CR Studio 2** | 1.00 | $0.00 | **$0.00** * |
| Product | **2001-00552-000-U \| Quasar table-top frame 4.5U, w/1 Power Supply**<br>Quasar Frames constitute the hardware backbone for all Quasar Family consoles and are available in sizes from 2.5U to 7.5U. These sizes offer support for the combination of a Master Module with 4 up to 24 faders respectively. Quasar XR offers support for up to 64 faders through multiple linked frames and Quasar SR offers an upper limit of support to 32 faders. Quasar Power Supply Unit(s) included with each frame purchase.<br>Width: from 428mm / 16.85” (4 faders + Master) Depth: 580mm / 22.83” Height: 110mm / 4.33” (Table-top frame with rubber feet) | 1.00 | $2,516.00 | **$2,516.00** * |
| Product | **2001-00569-000-U \| Quasar XR-4FAD Module, Motorized** (Factory Installed)<br>Quasar eXtended Functionality 4-Motorized Faders module, 1U wide - (4ch) | 3.00 | $4,315.50 | **$12,946.50** * |
| Product | **2001-00568-000-U \| Quasar MTS-MON Module** (Factory Installed)<br>Quasar Master Touch Screen Monitor module, 1.5U wide - (6ch) | 1.00 | $4,495.50 | **$4,495.50** * |
| Product | **2001-00584-000-U \| Quasar Engine Base** (16 Channel)<br>The Quasar Engine provides bulletproof mixing console signal processing for Quasar surfaces. Each engine is equipped with multiple simultaneous AoIP inputs, outputs, automatic mix-minus feeds, monitor signals, etc., and can provide Input Filters, Dynamics, EQ De-Esser and Automixer for all channels, as well as studio headphone processing and multiple VMix (Virtual Mixer) channels. The third-generation QuasarEngine is a rock-solid appliance based on industrial server-class hardware, it is just one rack unit and comes standard with dual Gigabit Ethernet ports and dual-redundant hot-swap power supplies with automatic switching for complete peace of mind. Auto-sensing power supplies, 90VAC to 240VAC, 50 Hz to 60 Hz. 100 Watts.<br>Rackmount, 1RU | 1.00 | $5,215.50 | **$5,215.50** * |

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| Product | **3002-00098-000 \| 16 Channel Engine Expansion license** This license adds 16 Input channels to your Quasar Engine. Add multiple licenses to increase the Engine's channel count up to 64 inputs, in blocks of 16. | 3.00 | $896.00 | **$2,688.00** * |
| Product | **2001-00297-000-U \| Telos Alliance Microphone xNode** Compact 9.5" x 11" second-generation AoIP interface. 16-channel xNode provides 4 mic inputs with switchable Phantom power, with preamp gain adjustable from -74dBu to -19dBu, and 8 mono or 4 stereo balanced line-level outputs for headphone or monitor feeds. Fully AES67 compliant. | 1.00 | $1,996.00 | **$1,996.00** * |
| Product | **2001-00298-000-U \| Telos Alliance Analog xNode** Compact 9.5" x 11" second-generation AoIP interface provides 4 stereo (8 mono) analog inputs and outputs. Fully AES67 compliant. | 2.00 | $1,996.00 | **$3,992.00** * |
| Product | **2001-00299-000-U \| Telos Alliance AES/EBU xNode** Compact 9.5" x 11" second-generation AoIP interface provides 4 stereo AES inputs and outputs. Fully AES67 compliant. | 1.00 | $1,996.00 | **$1,996.00** * |
| Product | **2001-00301-000-U \| Telos Alliance GPIO xNode** Compact 9.5" x 11" second-generation AoIP interface with 6 GPIO ports for control of peripheral devices. | 1.00 | $1,829.00 | **$1,829.00** * |
| Product | **StreamLine Custom Furniture** CR Studio Furniture Laminate Surface Top | 1.00 | $7,560.00 | **$7,560.00** * |
| Product | **Titus HPL-BFU-F** Hanging "PLEXIGLAS" Light Fixture BLUE Resting RED Active | 1.00 | $234.72 | **$234.72** * |
| Product | **Henry Engineering SUPERELAY II** SupeRelay II Utility Control Interface | 1.00 | $395.00 | **$395.00** * |
| Product | **Genelec 8030BPM** 5" LF/ 40W & .75" HF/ 40W. ISS™ Power Management. Producer Black Finish | 2.00 | $602.88 | **$1,205.76** * |
| Product | **Yellowtec YT3231** MIKA Fleximount for Genelec | 2.00 | $178.50 | **$357.00** * |
| Product | **Genelec GEN-8000-437B** GENELEC 8000-437B VESA ADAPTER FITS 8000 SPEAKER SERIES | 1.00 | $65.63 | **$65.63** * |
| Product | **Fostek 6301NX** Fostex 6301NX - 4" Active Monitor Speaker 20W D-Class (Single) | 1.00 | $256.16 | **$256.16** * |
| Product | **Fostek EB-6301** Fostex EB-6301 Mount Bracket for 6301N Series Monitor | 1.00 | $40.17 | **$40.17** * |
| Product | **Angry Audio 991030** Headphone Gizmo, 115VAC | 5.00 | $219.00 | **$1,095.00** * |
| Product | **AngryAudio PS-CUBE** DC Cube Power Supply | 2.00 | $35.00 | **$70.00** * |
| Product | **Mackie HM-800** Rack-Mountable, 8-Channel Headphone Amplifier | 1.00 | $193.37 | **$193.37** * |
| Product | **Yellowtec YT3245** MMS Desktop Mounting Kit, includes 2x Cable Clamp and 1x Yellow Spacer | 6.00 | $58.62 | **$351.72** * |
| Product | **Yellowtec YT9100** LITT High Definition Signal Light. LITT 50 Base Controller | 1.00 | $162.75 | **$162.75** * |
| Product | **Yellowtec YT9603** LITT Multicore System Cable (328 ft) | 1.00 | $360.50 | **$360.50** * |

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| Product | **Yellowtec YT3243** MIKA 21" MMS Pole for Monitoring/Mic Arm Support | 3.00 | $133.00 | **$399.00** * |
| Product | **Yellowtec YT3235** Mika 7" MSS Pole | 3.00 | $53.37 | **$160.11** * |
| Product | **Yellowtec YT9201** LITT High Definition Signal Light, Color Segment (RED) 50/22 | 1.00 | $108.50 | **$108.50** * |
| Product | **Yellowtec YT9202** LITT High Definition Signal Light, Color Segment (Green) 50/22 | 1.00 | $108.50 | **$108.50** * |
| Product | **Yellowtec YT9204** LITT High Definition Signal Light, Color Segment (White) 50/22 | 1.00 | $126.00 | **$126.00** * |
| Product | **Yellowtec YT3812** m!ka EasyLift Monitor Arm M | 4.00 | $506.63 | **$2,026.52** * |
| Product | **Yellowtec YT3213MK2** Mic Arm to MSS Pole Adapter | 5.00 | $125.13 | **$625.65** * |
| Product | **Yellowtec YT3305** M!KA On-Air Microphone Arm XL Aluminum Max. Length 42.3 Inch (107.5cm) | 1.00 | $559.13 | **$559.13** * |
| Product | **Yellowtec YT3209** MIKA TV Low Profile Mic Arm with On Air Signal LED | 3.00 | $524.13 | **$1,572.39** * |
| Product | **Henry Engineering MIKEALERT** Henry ENG MIKEALERT Henry Mike Alert Interface | 2.00 | $322.29 | **$644.58** * |
| Product | **Henry Engineering RMS** Henry ENG RMS Henry Rack Kit | 2.00 | $87.50 | **$175.00** * |
| Product | **NotaBotYet Y15-R01-3** Interface for Yellowtec Litt Signaling Device | 1.00 | $106.17 | **$106.17** * |
| Product | **Neumann U87** Neumann U 87 Ai Set Large-Diaphragm Condenser Microphone - Nickel | 1.00 | $3,695.00 | **$3,695.00** * |
| Product | **Neumann TLM 103** Neumann TLM 103 Large-diaphragm Condenser Microphone - Nickel | 3.00 | $1,195.00 | **$3,585.00** * |
| Product | **Great River MP2NV** 2-channel Mic/Instrument Preamp with 60dB Gain and Transformer-balanced Output | 2.00 | $2,086.88 | **$4,173.76** * |
| Product | **Dell U2419H** Dell UltraSharp 24 Monitor - U2419H<br>23.8" In-Plane Switching (IPS) Panel<br>DisplayPort & HDMI Inputs<br>1920 x 1080 Resolution<br>1000:1 Static Contrast Ratio | 4.00 | $328.90 | **$1,315.60** * |
| Product | **Dell EDIT PC** Dell OptiPlex 7010 Micro Plus Form Factor Desktop Computer<br>13th Gen Intel Core i7 Processor<br>16GB DDR5 RAM<br>512GB M.2 PCIe SSD<br>Integrated Intel UHD 770 Graphics<br>3 x DisplayPort 1.4a Video Outputs<br>USB 3.2 Gen 1, Gen 2, Gen 2x2 Ports<br>Wi-Fi 6E \| Bluetooth \| GbE LAN<br>Wireless Mouse & Keyboard Included<br>Mountable Design<br>Windows 11 Pro | 1.00 | $1,249.00 | **$1,249.00** * |
| Product | **Telos Axia 300100017100** Livewire Axia Driver | 2.00 | $221.00 | **$442.00** * |

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|---|---|---|---|---|
| Product | **Samsung UN50AU8000FXZA** Samsung 50" AU8000 Black Crystal UHD 4K Smart TV | 2.00 | $492.79 | **$985.58** * |
| Product | Chief TV Mounts Chief LTM1U Fusion Series Tilting Landscape Wall Mount for 37 to 63" Displays | 1.00 | $337.70 | **$337.70** * |
| Product | **ESE ES-993 U/NTP-C/BLUE/POE** ESE Clock | 1.00 | $656.25 | **$656.25** * |
| Product | **Paravel Wall Time** | 1.00 | $425.00 | **$425.00** * |
| Product | ATS Acoustic Panels<br>This panel is 2 inches thick. [?]<br>Average weight per panel: 12 lbs<br>Core material is Roxul AFB mineral wool, a highly effective sound absorber (NRC 0.95 out of 1). Higher NRC means fewer panels are needed to treat your space.<br>Built to last with a solid wood internal frame that protects edges and corners from dents and damage.<br>1/4-inch wood back panel for easy and secure installation without glue.<br>Attractive, textured cover fabric is 100% jute. Available in a range of colors to match your style.<br>Combine sizes and colors in creative patterns for a unique and visually impressive look.<br>Furniture-quality design and workmanship. Handcrafted in the USA. | 30.00 | $92.87 | **$2,786.10** * |
| Product | **Cisco C1000-16FP-2G-L** Cisco C1000-16FP-2G-L 16 Ports - Manageable - 2 Layer Supported - Modular - 2 SFP Slots - Twisted Pair, Optical Fiber - Rack-mountable | 1.00 | $1,473.95 | **$1,473.95** * |
| Product | **TOC** | 1.00 | $0.00 | **$0.00** * |
| Product | **2001-00515-000-U \| Pathfinder Core PRO Broadcast Controller**<br>For stations that desire reliable, redundant, system-wide routing control without PCs. Pathfinder Core PRO is the next generation of Livewire control, which builds on our extensive experience controlling Livewire systems. A Linux-based network-attached appliance with a web-UI provides route control and custom logic events. Because it is a web interface, Pathfinder Core PRO becomes PC-platform-independent; you can use almost any personal computing device to interface.<br>Exclusive features include automatic router table generation, graphical interface with real-time state reporting, logic gates for creation of complex logic, and control protocol for third-party integration. Dual Gigabit Ethernet ports and dual-redundant internal power supplies. Rackmount, 1RU. Includes 1000 points to be jointly used for crosspoint and logic rules. | 2.00 | $7,195.50 | **$14,391.00** * |
| Product | **2011-00138-000-U \| Pathfinder Core PRO Add-On License**<br>License to add either 500 audio points or 500 logic points to a Pathfinder Core Pro. | 2.00 | $1,800.00 | **$3,600.00** * |
| Product | **2001-00530-000-U \| Program Delay Manager II**<br>Program Delay Manager II (PDM II) refreshes an industry favorite, expanding and improving the classic PDM delay for the AoIP world of today. The extensive features and ease of use of the original PDM is carried forward and combined with redundant power and dual network ports in a silent, fanless design. Simply put, you won't find a more feature-rich content or 'profanity' delay than PDM II. | 2.00 | $3,325.50 | **$6,651.00** * |
| Product | **2001-00298-000-U \| Telos Alliance Analog xNode**<br>Compact 9.5" x 11" second-generation AoIP interface provides 4 stereo (8 mono) analog inputs and outputs. Fully AES67 compliant. | 6.00 | $1,996.00 | **$11,976.00** * |

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| Product | **2001-00299-000-U \| Telos Alliance AES/EBU xNode**<br>Compact 9.5” x 11” second-generation AoIP interface provides 4 stereo AES inputs and outputs. Fully AES67 compliant. | 4.00 | $1,996.00 | **$7,984.00** * |
| Product | **2001-00301-000-U \| Telos Alliance GPIO xNode**<br>Compact 9.5" x 11" second-generation AoIP interface with 6 GPIO ports for control of peripheral devices. | 1.00 | $1,829.00 | **$1,829.00** * |
| Product | **3001-00033-100-U \| iProFiler Automated Program Archiving**<br>iProFiler logging software lets you simultaneously capture up to 24 stereo audio channels to time-stamped MP3 audio logs directly from your Axia IP-Audio network — no audio cards required. CD-ROM includes software to record, manage and play back archived audio files. Record mode can be set for logging, skimming, or combination of both. Logged audio may be auditioned remotely via LAN, WAN, or Internet, if you choose.<br>Supported Windows versions: Windows 2000 Professional, XP Pro (32-bit, standard), XP Home Editions, Windows 2003 Server R2, Vista (32- and 64-bit editions), Windows 7 and Windows 7 Pro (32- and 64-bit editions), Windows 8.<br>Minimum hardware requirements: 2.4GHz processor (or equivalent) with 512Mb RAM, 300Gb free hard-drive space (enough to continuously archive 24 64kbps streams for two weeks) and a 100Base-T NIC. | 1.00 | $995.00 | **$995.00** * |
| Product | **3001-00040-100-U \| iProbe Network Management Software**<br>iProbe is an intelligent network maintenance and diagnostics tool that makes managing, updating, and remote controlling your Axia system easier than ever. There’s a powerful auto-documentation feature that generates configuration docs for every device. The Organizer lets you group Audio Nodes into logical groups for easy management, upload software to single or multiple devices, make device configuration backups and more — all from the comfort of your office.<br>Supported Windows versions: Windows 2000 Professional, XP Pro (32-bit, standard), XP Home Editions, Windows 2003 Server R2, Vista (32- and 64-bit editions), Windows 7 and Windows 7 Pro (32- and 64-bit editions), Windows 8. | 1.00 | $495.00 | **$495.00** * |
| Product | **Middle Atlantic VMRK5436** VMRK SERIES RACK, VMRK-54-36 54RU 36" Deep | 6.00 | $2,448.42 | **$14,690.52** * |
| Product | **Middle Atlantic VRR-54** Additional rail kit, 54 space 10-32 threaded pair | 6.00 | $190.16 | **$1,140.96** * |
| Product | **Middle Atlantic MW-VT** Vented Top Panel | 6.00 | $51.21 | **$307.26** * |
| Product | **Middle Atlantic BB-5254-1** Copper Bus Bar | 6.00 | $214.49 | **$1,286.94** * |
| Product | **Middle Atlantic SPN-54-(312,36)** Keylocked side panel | 4.00 | $789.05 | **$3,156.20** * |
| Product | **Middle Atlantic LACE-P** Vertical Cable Manager | 6.00 | $119.16 | **$714.96** * |
| Product | **Middle Atlantic PDT-2015C-RN** POWER STRIP, 20 OUTLET, 15A, 2-STAGE SURGE | 6.00 | $204.04 | **$1,224.24** * |
| Product | **Middle Atlantic RLNK-1615V** 15A, 16 outlet, low profile vertical IP controlled power with RackLink | 6.00 | $349.00 | **$2,094.00** * |
| Product | **Middle Atlantic LT-CABUTL-SINGLE** Single LED work light | 6.00 | $123.49 | **$740.94** * |
| Product | **Cisco C9300-48P-A** Cisco 9300 Catalyst 9300 48-port PoE+ Switch Network Advantage | 2.00 | $6,203.96 | **$12,407.92** * |
| Product | **Cisco STACK-T1-1M** StackWise 480 - Stacking cable - 3.3 ft | 2.00 | $154.65 | **$309.30** * |

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| Product | **Cisco CAB-SPWR-150CM** CTO 3750X STACK PWR CBL 150 CM | 2.00 | $77.92 | **$155.84** * |
| Product | **Cisco PWR-C1-715WAC-P/2** 715W AC 80+ PLATINUM CONFIG 1<br>SECONDARY | 2.00 | $947.55 | **$1,895.10** * |
| Product | *Cisco FAN-T2= *Cisco Type 2 - fan unit | 2.00 | $230.64 | **$461.28** * |
| Product | **Cisco CON-SNT-C93004PA SNTC-8X5XNBD** CATALYST 9300 48PT<br>POE+. Cisco SMARTnet extended service agreement - | 2.00 | $2,165.58 | **$4,331.16** * |
| Product | **Cisco C9300-DNA-A-48-3Y** C9300 DNA ADVANTAGE 48PT 3YR TERM LICENSE | 2.00 | $2,703.50 | **$5,407.00** * |
| Product | **Cisco Business CBS220-48T-4G** Smart Switch \| 48 Port GE \| 4x1G SFP \| 3-Year Limited Hardware Warranty (CBS220-48T-4G-NA | 2.00 | $575.69 | **$1,151.38** * |
| Product | **IOGear GCL1800** KVM Drawer | 1.00 | $816.44 | **$816.44** * |
| Product | **Avocent AV116BND8-400** Vertiv 16-Port 1U Analog KVM 8VGA Cables 1U/Desktop | 1.00 | $767.84 | **$767.84** * |
| Product | **GatesAir IX-IPL-200** IP audio codec with two bi-directional stereo signals and front panel user interface. Includes Linear, Opus, G.722, and AAC-LC coding | 2.00 | $3,875.76 | **$7,751.52** * |
| Product | **GatesAir IX-IPL-XPS-MOD** External redundant AC power supply for IP Link 100 and 200 | 2.00 | $83.16 | **$166.32** * |
| Product | **Inovonics 568** SOFIA HD Radio™ SiteStreamer+™ | 1.00 | $2,362.50 | **$2,362.50** * |
| Product | **Inovonics RK-00** Inovonics Rackmount Kit | 1.00 | $99.23 | **$99.23** * |
| Product | **Burk Technology ARC PLUS TOUCH** Remote Monitoring & Control System | 1.00 | $3,532.66 | **$3,532.66** * |
| Product | **Burk Technology RSI** Recordable Speech Interface for the ARC Plus Touch. | 1.00 | $1,078.00 | **$1,078.00** * |
| Product | **Burk Technology JET** Jet Active Flowcharts Remote Control Management Software | 1.00 | $322.00 | **$322.00** * |
| Product | **Burk Technology AutoPilot ARC PLUS** AutoPilot license for ARC Plus, ARC Plus Touch or ARC Plus SL | 1.00 | $583.34 | **$583.34** * |
| Product | **Burk Technology FLOOD DETECTOR** Flood Detector | 2.00 | $74.67 | **$149.34** * |
| Product | **Burk Technology TEMP-OUTDOOR** Digital Outdoor Temperature Sensor | 1.00 | $65.33 | **$65.33** * |
| Product | **Burk Technology TS-1** Burk TS-1 Dial Line Transient Suppressor | 1.00 | $359.33 | **$359.33** * |
| Product | **Burk Technology PLUS-X 600** Ethernet I/O for ARC Plus | 1.00 | $1,703.33 | **$1,703.33** * |
| Product | **Burk Technology PLUS-X EM32** Environmental Monitoring for ARC Plus | 1.00 | $648.67 | **$648.67** * |
| Product | **ESE ES 188F/PTP NTP** Referenced Master Clock/Time Code Generator - 1¾” Rack Mount | 1.00 | $2,791.25 | **$2,791.25** * |

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| Product | **ESE ES 243** Quad 1x6 ESE Time Code DA Options Available: Black(1), J, UL, W(1) | 1.00 | $520.62 | **$520.62** * |
| Product | **Comrex ACCESS MultiRack** Stereo IP Audio Codec Rackmount IP audio multi-codec, capable of five full-duplex IP audio codec connections | 1.00 | $5,460.00 | **$5,460.00** * |
| Product | **Marshall AR-AM4-BG-2** Marshall Electronics AR-AM4-BG-2 4x1 Stereo Analog Audio Monitoring System | 1.00 | $485.32 | **$485.32** * |
| Product | **Broadcast Tools UNI41MLRWEB** Universal 4.1 MLR»Web Audio Switcher | 1.00 | $525.80 | **$525.80** * |
| Product | **BW Ariane** Ariane Sequel AGC | 1.00 | $2,199.95 | **$2,199.95** * |
| Product | Dell Precision 7920 Rack Precision 7920 Rack for iProfiler<br>Intel® Xeon® Silver 4210R (13.75 MB cache, 10 cores, 20 threads, 2.40 GHz to 3.20 GHz Turbo, 100 W)<br>Windows 11 Pro for Workstations (6 cores plus), English, French, Spanish<br>NVIDIA® T1000, 4 GB GDDR6, 4 mDP<br>32 GB, 4 x 8 GB, DDR4, 2933 MHz, ECC<br>C11 Dell Ultra-Speed Drive Boot + No Additional Storage<br>2x Integrated Intel 4 port SATA controllers (8 ports @ 6.0Gbps) SW RAID 0,1,5,10 (on 4 ports only)<br>Dell Ultra-Speed Drive Duo PCIe SSD x8 LP Card, 1 M.2 512GB PCIe NVMe Class 40 Solid State Drive<br>12 TB, 7200 RPM, 3.5-inch, SATA, HDD, AG-Enterprise Class<br>12 TB, 7200 RPM, 3.5-inch, SATA, HDD, AG-Enterprise Class | 1.00 | $6,700.00 | **$6,700.00** * |
| Product | ----- | 1.00 | $0.00 | **$0.00** * |
| Product | ------ | 1.00 | $0.00 | **$0.00** * |
| Product | ------ | 1.00 | $0.00 | **$0.00** * |
| Product | **H168B Studio 3** | 1.00 | $0.00 | **$0.00** * |
| Product | **StreamLine Custom Furniture** CR Studio Furniture Laminate Surface Top | 1.00 | $7,560.00 | **$7,560.00** * |
| Product | **2001-00552-000-U \| Quasar table-top frame 4.5U, w/1 Power Supply**<br>Quasar Frames constitute the hardware backbone for all Quasar Family consoles and are available in sizes from 2.5U to 7.5U. These sizes offer support for the combination of a Master Module with 4 up to 24 faders respectively. Quasar XR offers support for up to 64 faders through multiple linked frames and Quasar SR offers an upper limit of support to 32 faders. Quasar Power Supply Unit(s) included with each frame purchase.<br>Width: from 428mm / 16.85” (4 faders + Master) Depth: 580mm / 22.83” Height: 110mm / 4.33” (Table-top frame with rubber feet) | 1.00 | $2,516.00 | **$2,516.00** * |
| Product | **2001-00569-000-U \| Quasar XR-4FAD Module, Motorized** (Factory Installed)<br>Quasar eXtended Functionality 4-Motorized Faders module, 1U wide - (4ch) | 3.00 | $4,316.00 | **$12,948.00** * |
| Product | **2001-00568-000-U \| Quasar MTS-MON Module** (Factory Installed)<br>Quasar Master Touch Screen Monitor module, 1.5U wide - (6ch) | 1.00 | $4,496.00 | **$4,496.00** * |

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| Product | **2001-00584-000-U \| Quasar Engine Base** (16 Channel) The Quasar Engine provides bulletproof mixing console signal processing for Quasar surfaces. Each engine is equipped with multiple simultaneous AoIP inputs, outputs, automatic mix-minus feeds, monitor signals, etc., and can provide Input Filters, Dynamics, EQ De-Esser and Automixer for all channels, as well as studio headphone processing and multiple VMix (Virtual Mixer) channels. The third-generation QuasarEngine is a rock-solid appliance based on industrial server-class hardware, it is just one rack unit and comes standard with dual Gigabit Ethernet ports and dual-redundant hot-swap power supplies with automatic switching for complete peace of mind. Auto-sensing power supplies, 90VAC to 240VAC, 50 Hz to 60 Hz. 100 Watts. Rackmount, 1RU | 1.00 | $5,396.00 | **$5,396.00** * |
| Product | **3002-00098-000 \| 16 Channel Engine Expansion license** This license adds 16 Input channels to your Quasar Engine. Add multiple licenses to increase the Engine's channel count up to 64 inputs, in blocks of 16. | 3.00 | $896.00 | **$2,688.00** * |
| Product | **Titus HPL-BFU-F** Hanging "PLEXIGLAS" Light Fixture BLUE Resting RED Active | 1.00 | $234.72 | **$234.72** * |
| Product | **Henry Engineering SUPERELAY II** SupeRelay II Utility Control Interface | 1.00 | $395.00 | **$395.00** * |
| Product | **Genelec 8030BPM** 5" LF/ 40W & .75" HF/ 40W. ISS™ Power Management. Producer Black Finish | 2.00 | $602.88 | **$1,205.76** * |
| Product | **Yellowtec YT3231** MIKA Fleximount for Genelec | 2.00 | $178.50 | **$357.00** * |
| Product | **Genelec GEN-8000-437B** GENELEC 8000-437B VESA ADAPTER FITS 8000 SPEAKER SERIES | 1.00 | $65.63 | **$65.63** * |
| Product | **Fostek 6301NX** Fostex 6301NX - 4" Active Monitor Speaker 20W D-Class (Single) | 1.00 | $256.16 | **$256.16** * |
| Product | **Fostek EB-6301** Fostex EB-6301 Mount Bracket for 6301N Series Monitor | 1.00 | $40.17 | **$40.17** * |
| Product | **Angry Audio 991030** Headphone Gizmo, 115VAC | 1.00 | $219.00 | **$219.00** * |
| Product | **AngryAudio PS-CUBE** DC Cube Power Supply | 1.00 | $35.00 | **$35.00** * |
| Product | **Mackie HM-800** Rack-Mountable, 8-Channel Headphone Amplifier | 1.00 | $193.37 | **$193.37** * |
| Product | **Yellowtec YT3245** MMS Desktop Mounting Kit, includes 2x Cable Clamp and 1x Yellow Spacer | 2.00 | $58.62 | **$117.24** * |
| Product | **Yellowtec YT9100** LITT High Definition Signal Light. LITT 50 Base Controller | 1.00 | $162.75 | **$162.75** * |
| Product | **Yellowtec YT9603** LITT Multicore System Cable (328 ft) | 1.00 | $360.50 | **$360.50** * |
| Product | **Yellowtec YT3243** MIKA 21" MMS Pole for Monitoring/Mic Arm Support | 2.00 | $133.00 | **$266.00** * |
| Product | **Yellowtec YT9201** LITT High Definition Signal Light, Color Segment (RED) 50/22 | 1.00 | $108.50 | **$108.50** * |
| Product | **Yellowtec YT9202** LITT High Definition Signal Light, Color Segment (Green) 50/22 | 1.00 | $108.50 | **$108.50** * |

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|---|---|---|---|---|
| Product | **Yellowtec YT9204** LITT High Definition Signal Light, Color Segment (White) 50/22 | 1.00 | $126.00 | **$126.00** * |
| Product | **Yellowtec YT3812** m!ka EasyLift Monitor Arm M | 4.00 | $506.63 | **$2,026.52** * |
| Product | **Yellowtec YT3213MK2** Mic Arm to MSS Pole Adapter | 5.00 | $125.13 | **$625.65** * |
| Product | **Yellowtec YT3305** M!KA On-Air Microphone Arm XL Aluminum Max. Length 42.3 Inch (107.5cm) | 1.00 | $559.13 | **$559.13** * |
| Product | **Henry Engineering RMS** Henry ENG RMS Henry Rack Kit | 1.00 | $87.50 | **$87.50** * |
| Product | **NotaBotYet Y15-R01-3** Interface for Yellowtec Litt Signaling Device | 1.00 | $106.17 | **$106.17** * |
| Product | **Neumann U87** Neumann U 87 Ai Set Large-Diaphragm Condenser Microphone - Nickel | 1.00 | $3,695.00 | **$3,695.00** * |
| Product | **Great River MP2NV** 2-channel Mic/Instrument Preamp with 60dB Gain and Transformer-balanced Output | 1.00 | $2,086.88 | **$2,086.88** * |
| Product | **Henry Engineering MIKEALERT** Henry ENG MIKEALERT Henry Mike Alert Interface | 1.00 | $332.29 | **$332.29** * |
| Product | **Dell U2419H** Dell UltraSharp 24 Monitor - U2419H<br>23.8" In-Plane Switching (IPS) Panel<br>DisplayPort & HDMI Inputs<br>1920 x 1080 Resolution<br>1000:1 Static Contrast Ratio | 4.00 | $328.90 | **$1,315.60** * |
| Product | **Dell EDIT PC** Dell OptiPlex 7010 Micro Plus Form Factor Desktop Computer<br>13th Gen Intel Core i7 Processor<br>16GB DDR5 RAM<br>512GB M.2 PCIe SSD<br>Integrated Intel UHD 770 Graphics<br>3 x DisplayPort 1.4a Video Outputs<br>USB 3.2 Gen 1, Gen 2, Gen 2x2 Ports<br>Wi-Fi 6E \| Bluetooth \| GbE LAN<br>Wireless Mouse & Keyboard Included<br>Mountable Design<br>Windows 11 Pro | 1.00 | $1,249.00 | **$1,249.00** * |
| Product | **Telos Axia 300100017100** Livewire Axia Driver | 1.00 | $221.00 | **$221.00** * |
| Product | **ESE ES-993 U/NTP-C/BLUE/POE** ESE Clock | 1.00 | $656.25 | **$656.25** * |
| Product | **Cisco C1000-16FP-2G-L** Cisco C1000-16FP-2G-L 16 Ports - Manageable - 2 Layer Supported - Modular - 2 SFP Slots - Twisted Pair, Optical Fiber - Rack-mountable | 1.00 | $1,473.95 | **$1,473.95** * |

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|---|---|---|---|---|
| Product | ATS Acoustic Panels<br>This panel is 2 inches thick. [?]<br>Average weight per panel: 12 lbs<br>Core material is Roxul AFB mineral wool, a highly effective sound absorber (NRC 0.95 out of 1). Higher NRC means fewer panels are needed to treat your space.<br>Built to last with a solid wood internal frame that protects edges and corners from dents and damage.<br>1/4-inch wood back panel for easy and secure installation without glue.<br>Attractive, textured cover fabric is 100% jute. Available in a range of colors to match your style.<br>Combine sizes and colors in creative patterns for a unique and visually impressive look.<br>Furniture-quality design and workmanship. Handcrafted in the USA. | 10.00 | $92.87 | **$928.70** * |
| Product | ---- | 1.00 | $0.00 | **$0.00** * |
| Product | **Speakers** | 1.00 | $0.00 | **$0.00** * |
| Product | **Bogen X600** Bogen X600 Black Max Rackmount 70V Power Amplifier (600W per Channel) | 1.00 | $1,295.00 | **$1,295.00** * |
| Product | **QSC AD-C6T-LP** QSC AcousticDesign 6.5" 2-Way, Low-Profile Ceiling Loudspeaker (Pair, White) | 10.00 | $550.00 | **$5,500.00** * |
| Product | **Comprehensive CAC-18-2/P-500** Comprehensive CAC-18-2/P-500 2-Conductor Stranded Plenum Speaker Cable (500') | 2.00 | $239.99 | **$479.98** * |
| Product | ------ | 1.00 | $0.00 | **$0.00** * |
| Product | **Security** | 1.00 | $0.00 | **$0.00** * |
| Product | **Ubiquiti UNVR-Pro 10** Network Video Recorder Professional UNVR-Pro 10 Cameras for 60 days of Storage | 1.00 | $1,379.00 | **$1,379.00** * |
| Product | **Ubiquiti UVC-AI-360** AI 360 Camera | 10.00 | $339.00 | **$3,390.00** * |
| Product | **Ubiquiti UVC-G4-PRO** G4 Professional UVC-G4-PRO | 2.00 | $449.00 | **$898.00** * |
| Product | **Ubiquiti UDM-SE** Dream Machine Special Edition UDM-SE (172W) | 1.00 | $499.00 | **$499.00** * |
| Product | **Ubiquiti USW-Pro-24-POE** Professional 24 PoE USW-Pro-24-POE (400W) Network Switch | 1.00 | $699.00 | **$699.00** * |
| Product | **Ubiquiti UXG-Pro** Gateway Professional UXG-Pro | 1.00 | $499.00 | **$499.00** * |
| Product | **Blackbox C6-CMP-SLD-WH** CAT6 250-MHz Solid Ethernet Bulk Cable - Unshielded (UTP), CMP Plenum, White, 1000-ft. (304.8-m) Pull-Box | 2.00 | $449.99 | **$899.98** * |
| Product | **Blackbox FMT631-R3-25PAK** Black Box GIGATRUE2 CAT6 Jacks, Universal Wiring | 1.00 | $149.99 | **$149.99** * |
| Product | **Blackbox JPMT1024A** GIGASTATION2 High-Density Multimedia Patch Panel 24 Port | 1.00 | $97.99 | **$97.99** * |
| Product | **Panduit NCMHF1** Panduit NetManager Horizontal Cable Manager - rack cable management kit - 1 | 4.00 | $90.36 | **$361.44** * |
| Product | **Panduit NCMHF2** Panduit NetManager Horizontal Cable Manager - rack cable management kit - 1 | 1.00 | $93.43 | **$93.43** * |

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| Product | ---- | 1.00 | $0.00 | **$0.00** * |
| Product | **Satellite Dish** | 1.00 | $0.00 | **$0.00** * |
| Product | **DH 38DH448A** DH SATELLITE 3.8M PAINTED 4PC ANT. W/48" AZ-EL STANDARD FIXED MOUNT<br>W/C14F STRUTS & COLLAR" | 1.00 | $4,226.14 | **$4,226.14** * |
| Product | **DH 2PORTFEED** DH 2 PORT FEED HORN, HARVARD SCIENT - IFIC | 1.00 | $156.60 | **$156.60** * |
| Product | **TVC Communications PALLETFEEDH PALLET** MATERIAL HANDLING/PALLET CHARGE | 1.00 | $145.00 | **$145.00** * |
| Product | **BAIRD PXT662X3RP** BAIRD PXL2 NON-PEN ROOF MNT./3'MAST 6.62"OD; FOR 3.0M & 3.7M DISH | 1.00 | $0.00 | **$0.00** * |
| Product | **Norsat 3120F** C-Band (3.4 to 4.2 GHz) PLL LNB (F-Connector) | 1.00 | $258.98 | **$258.98** * |
| Product | Alga 210031803K Alga Microwave 210031803K 5G Blue Interference Filter – 4.0-4.2 GHz w/<br>GAS & HW - 2100318-03-K (Blue) | 1.00 | $528.94 | **$528.94** * |
| Product | **Citel P8AX09-FFF** Gas Tube Surge Protector, DC-5 GHz, 25w, F, FF Bulkhead | 1.00 | $93.53 | **$93.53** * |
| Product | **Citel BKF1** MOUNTING BRACKET FOR P8AX09FFF Single | 1.00 | $16.96 | **$16.96** * |
| Product | **DH DEICE KIT FOR DH 3.8 METER** FULL REFLECTOR , KIT INCLUDES SENSORS AND<br>CONTROL MODULE | 1.00 | $6,070.91 | **$6,070.91** * |
| Product | **DH RTI INSULATION KIT** 3.8M DH FULL INSULATION KIT, 3.8M DH, FULL REFLECTOR<br>BACK COVER | 1.00 | $1,529.77 | **$1,529.77** * |
| Product | **DH NPRM, BUILT TO SPEC FOR 1555 N. JAMES AVE MINNEOPLIS MN ROOF TOP**<br>Customer ref: PXQ550<br>5,685.0 pound ballast<br>required to resist sliding and overturning<br>17.0 PSF roof loading<br>(weight of equipment, mount and ballast / mount area)<br>7066.0 lbs total dead load<br>(weight of equipment, mount and ballast)" | 1.00 | $8,415.22 | **$8,415.22** * |
| Product | **Times Microwave LMR400DB** Amphenol - Times Microwave Systems Standard Cable, Watertight, Black PE Jacket, 500-ft Reel, LMR-400 Series | 1.00 | $620.00 | **$620.00** * |
| Product | Times Microwave F-Type Male Crimp Connector - LMR-400-75 - EZ400-FMH-75 | 6.00 | $48.00 | **$288.00** * |
| Product | **Quintech LS042150A4FWA000** Quintech LS4 2150/4x16A Commercial Quality 4-Way Active L-Band Splitter | 1.00 | $897.00 | **$897.00** * |
| Service | Crane Service for Satellite Dish | 1.00 | $5,000.00 | **$5,000.00** * |
| Product | ----- | 1.00 | $0.00 | **$0.00** * |
| Product | **H168A MPS Voices Studio** | 1.00 | $0.00 | **$0.00** * |

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|---|---|---|---|---|
| Product | **StreamLine Custom Furniture** CR Studio Furniture Laminate Surface Top | 1.00 | $7,560.00 | **$7,560.00** * |
| Product | **Titus HPL-BFU-F** Hanging PLEXIGLAS Light Fixture BLUE Resting RED Active | 1.00 | $234.72 | **$234.72** * |
| Product | **Henry Engineering SUPERELAY II** Henry Engineering SupeRelay II Utility Control Interface | 1.00 | $395.00 | **$395.00** * |
| Product | **Genelec 8030BPM** 5" LF/ 40W & .75" HF/ 40W. ISS™ Power Management. Producer Black Finish | 2.00 | $602.88 | **$1,205.76** * |
| Product | **Yellowtec YT3231** MIKA Fleximount for Genelec | 2.00 | $178.50 | **$357.00** * |
| Product | **Genelec GEN-8000-437B** GENELEC 8000-437B VESA ADAPTER FITS 8000 SPEAKER SERIES | 1.00 | $65.63 | **$65.63** * |
| Product | **Fostek 6301NX** Fostex 6301NX - 4" Active Monitor Speaker 20W D-Class (Single) | 1.00 | $256.16 | **$256.16** * |
| Product | **Fostek EB-6301** Fostex EB-6301 Mount Bracket for 6301N Series Monitor | 1.00 | $40.17 | **$40.17** * |
| Product | **Angry Audio 991030** Headphone Gizmo, 115VAC | 1.00 | $219.00 | **$219.00** * |
| Product | **AngryAudio PS-CUBE** DC Cube Power Supply | 1.00 | $35.00 | **$35.00** * |
| Product | **Mackie HM-800** Rack-Mountable, 8-Channel Headphone Amplifier | 1.00 | $193.37 | **$193.37** * |
| Product | **Yellowtec YT3245** MMS Desktop Mounting Kit, includes 2x Cable Clamp and 1x Yellow Spacer | 6.00 | $58.62 | **$351.72** * |
| Product | **Yellowtec YT9100** LITT High Definition Signal Light. LITT 50 Base Controller | 1.00 | $162.75 | **$162.75** * |
| Product | **Yellowtec YT9603** LITT Multicore System Cable (328 ft) | 1.00 | $360.50 | **$360.50** * |
| Product | **Yellowtec YT3243** MIKA 21" MMS Pole for Monitoring/Mic Arm Support | 3.00 | $133.00 | **$399.00** * |
| Product | **Yellowtec YT3235** Mika 7" MSS Pole | 3.00 | $53.37 | **$160.11** * |
| Product | **Yellowtec YT9201** LITT High Definition Signal Light, Color Segment (RED) 50/22 | 1.00 | $108.50 | **$108.50** * |
| Product | **Yellowtec YT9202** LITT High Definition Signal Light, Color Segment (Green) 50/22 | 1.00 | $108.50 | **$108.50** * |
| Product | **Yellowtec YT9204** LITT High Definition Signal Light, Color Segment (White) 50/22 | 1.00 | $126.00 | **$126.00** * |
| Product | **Yellowtec YT3812** m!ka EasyLift Monitor Arm M | 4.00 | $506.63 | **$2,026.52** * |
| Product | **Yellowtec YT3213MK2** Mic Arm to MSS Pole Adapter | 5.00 | $125.13 | **$625.65** * |
| Product | **Yellowtec YT3305** M!KA On-Air Microphone Arm XL Aluminum Max. Length 42.3 Inch (107.5cm) | 1.00 | $559.13 | **$559.13** * |
| Product | **Yellowtec YT3209** MIKA TV Low Profile Mic Arm with On Air Signal LED | 3.00 | $524.13 | **$1,572.39** * |

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| Product | **Henry Engineering MIKEALERT** Henry ENG MIKEALERT Henry Mike Alert Interface | 2.00 | $322.29 | **$644.58** * |
| Product | **Henry Engineering RMS** Henry ENG RMS Henry Rack Kit | 2.00 | $87.50 | **$175.00** * |
| Product | **NotaBotYet Y15-R01-3** Interface for Yellowtec Litt Signaling Device | 1.00 | $106.17 | **$106.17** * |
| Product | **Electrovoice RE20 F.01U.117.390** RE20 Broadcast Mics | 3.00 | $474.00 | **$1,422.00** * |
| Product | **Electrovoice F.01U.117.892** 309A Suspension Microphone Shock Mount | 3.00 | $109.00 | **$327.00** * |
| Product | **Better Bands Better Bundle** Better Bands Better Nut and Better Band Bundle | 1.00 | $48.99 | **$48.99** * |
| Product | **Dell U2419H** Dell UltraSharp 24 Monitor - U2419H<br>23.8" In-Plane Switching (IPS) Panel<br>DisplayPort & HDMI Inputs<br>1920 x 1080 Resolution<br>1000:1 Static Contrast Ratio | 4.00 | $328.90 | **$1,315.60** * |
| Product | **Telos Axia 300100017100** Livewire Axia Driver | 1.00 | $221.00 | **$221.00** * |
| Product | **2001-00552-000-U \| Quasar table-top frame 4.5U, w/1 Power Supply**<br>Quasar Frames constitute the hardware backbone for all Quasar Family consoles and are available in sizes from 2.5U to 7.5U. These sizes offer support for the combination of a Master Module with 4 up to 24 faders respectively. Quasar XR offers support for up to 64 faders through multiple linked frames and Quasar SR offers an upper limit of support to 32 faders. Quasar Power Supply Unit(s) included with each frame purchase.<br>Width: from 428mm / 16.85” (4 faders + Master) Depth: 580mm / 22.83” Height: 110mm / 4.33” (Table-top frame with rubber feet) | 1.00 | $2,516.00 | **$2,516.00** * |
| Product | **2001-00569-000-U \| Quasar XR-4FAD Module, Motorized** (Factory Installed)<br>Quasar eXtended Functionality 4-Motorized Faders module, 1U wide - (4ch) | 3.00 | $4,316.00 | **$12,948.00** * |
| Product | **2001-00568-000-U \| Quasar MTS-MON Module** (Factory Installed)<br>Quasar Master Touch Screen Monitor module, 1.5U wide - (6ch) | 1.00 | $4,495.50 | **$4,495.50** * |
| Product | **2001-00584-000-U \| Quasar Engine Base** (16 Channel)<br>The Quasar Engine provides bulletproof mixing console signal processing for Quasar surfaces. Each engine is equipped with multiple simultaneous AoIP inputs, outputs, automatic mix-minus feeds, monitor signals, etc., and can provide Input Filters, Dynamics, EQ De-Esser and Automixer for all channels, as well as studio headphone processing and multiple VMix (Virtual Mixer) channels. The third-generation QuasarEngine is a rock-solid appliance based on industrial server-class hardware, it is just one rack unit and comes standard with dual Gigabit Ethernet ports and dual-redundant hot-swap power supplies with automatic switching for complete peace of mind. Auto-sensing power supplies, 90VAC to 240VAC, 50 Hz to 60 Hz. 100 Watts. Rackmount, 1RU | 1.00 | $5,396.00 | **$5,396.00** * |
| Product | **3002-00098-000 \| 16 Channel Engine Expansion license**<br>This license adds 16 Input channels to your Quasar Engine. Add multiple licenses to increase the Engine’s channel count up to 64 inputs, in blocks of 16. | 3.00 | $896.00 | **$2,688.00** * |

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| Product | **2001-00297-000-U \| Telos Alliance Microphone xNode**<br>Compact 9.5" x 11" second-generation AoIP interface. 16-channel xNode provides 4 mic inputs with switchable Phantom power, with preamp gain adjustable from -74dBu to -19dBu, and 8 mono or 4 stereo balanced line-level outputs for headphone or monitor feeds. Fully AES67 compliant. | 1.00 | $1,996.00 | **$1,996.00** * |
| Product | **2001-00298-000-U \| Telos Alliance Analog xNode**<br>Compact 9.5” x 11” second-generation AoIP interface provides 4 stereo (8 mono) analog inputs and outputs. Fully AES67 compliant. | 2.00 | $1,996.00 | **$3,992.00** * |
| Product | **2001-00299-000-U \| Telos Alliance AES/EBU xNode**<br>Compact 9.5” x 11” second-generation AoIP interface provides 4 stereo AES inputs and outputs. Fully AES67 compliant. | 1.00 | $1,996.00 | **$1,996.00** * |
| Product | **2001-00301-000-U \| Telos Alliance GPIO xNode**<br>Compact 9.5" x 11" second-generation AoIP interface with 6 GPIO ports for control of peripheral devices. | 1.00 | $1,829.00 | **$1,829.00** * |
| Product | **Cisco C1000-16FP-2G-L** Cisco C1000-16FP-2G-L 16 Ports - Manageable - 2 Layer Supported - Modular - 2 SFP Slots - Twisted Pair, Optical Fiber - Rack-mountable | 1.00 | $1,473.95 | **$1,473.95** * |
| Product | ATS Acoustic Panels<br>This panel is 2 inches thick. [?]<br>Average weight per panel: 12 lbs<br>Core material is Roxul AFB mineral wool, a highly effective sound absorber (NRC 0.95 out of 1). Higher NRC means fewer panels are needed to treat your space.<br>Built to last with a solid wood internal frame that protects edges and corners from dents and damage.<br>1/4-inch wood back panel for easy and secure installation without glue.<br>Attractive, textured cover fabric is 100% jute. Available in a range of colors to match your style.<br>Combine sizes and colors in creative patterns for a unique and visually impressive look.<br>Furniture-quality design and workmanship. Handcrafted in the USA. | 10.00 | $92.87 | **$928.70** * |
| Product | ---- | 1.00 | $0.00 | **$0.00** * |
| Product | ---- | 1.00 | $0.00 | **$0.00** * |
| Product | ------ | 1.00 | $0.00 | **$0.00** * |
| Product | Materials | 1.00 | $0.00 | **$0.00** * |
| Product | **NCMHF2 Panduit** Horizontal Cable Manager Front Only 2 Ru Ea | 4.00 | $93.44 | **$373.76** * |
| Product | **NCMHF1 Panduit** Horizontal Cable Manager Front Only 1 Ru Ea | 6.00 | $90.36 | **$542.16** * |
| Product | Belden Belden Dual-Pair Audio Cable Black/Grey 9451DP 500' | 1.00 | $455.00 | **$455.00** * |
| Product | Belden 8461 0601000 Belden 8461 Single-Pair 22AWG Audio Cable | 1.00 | $1,267.54 | **$1,267.54** * |
| Product | Belden 1800B T5X1000 Belden AES/EBU Digital Cable 1800B | 1.00 | $905.43 | **$905.43** * |
| Product | Canare L-4E6S Star Quad Microphone Cable (656'/200 m, Black) | 2.00 | $350.00 | **$700.00** * |
| Product | NC3FXX-B Neutrik Neutrik XLR Female | 208.00 | $5.87 | **$1,220.96** * |

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| Product | NC3MXX-B Neutrik Neutrik XLR Male | 208.00 | $5.72 | **$1,189.76** * |
| Product | NC5FD-LX-B Neutrik Receptacle DLX series 5 pin female - solder - black/gold | 36.00 | $15.32 | **$551.52** * |
| Product | NC5MXX-B Neutrik Conn; AV; XLR; Plug; 5 Cont; Cbl Mnt; Uninsulated; XX Series; | 56.00 | $7.30 | **$408.80** * |
| Product | NC3FRX-B Neutrik Conn; AV; XLR; Jack; 3 Cont; Cbl Mnt; Rt. Ang; Insulated; | 29.00 | $12.82 | **$371.78** * |
| Product | ADAPT-XLRM StudioHub StudioHub ADAPT-XLRM | 50.00 | $21.00 | **$1,050.00** * |
| Product | ADAPT-XLRF StudioHub StudioHub ADAPT-XLRF | 72.00 | $21.00 | **$1,512.00** * |
| Product | 6SP Tripp Lite SL Waber Power Strip | 16.00 | $44.00 | **$704.00** * |
| Product | UL17CB-15 Tripp Lite SL Waber Power Strip | 16.00 | $47.00 | **$752.00** * |
| Product | D10-PFP Furman Furman D10-PFP Power Distributor | 20.00 | $46.06 | **$921.20** * |
| Product | Excaliber Excaliber AES Adaptors XLR Female | 22.00 | $15.00 | **$330.00** * |
| Product | Excaliber Excaliber AES Adaptors XLR Male | 22.00 | $15.00 | **$330.00** * |
| Product | LBP-2A Middle Atlantic Middle Atlantic LBP-2A 10 PACK,"L" BAR W/2" OFFSET | 1.00 | $87.40 | **$87.40** * |
| Product | LBP-4A Middle Atlantic Middle Atlantic LBP-4A 10 PACK,"L"BAR W/4"OFFSET | 2.00 | $98.80 | **$197.60** * |
| Product | LBP-6A Middle Atlantic Middle Atlantic LBP-6A 10 PACK,"L"BAR W/6"OFFSET | 2.00 | $108.54 | **$217.08** * |
| Product | LBP-1A Middle Atlantic Middle Atlantic LBP-1A 10 PACK L LACER BAR | 2.00 | $50.99 | **$101.98** * |
| Product | N250-P12 Tripp Lite Tripp Lite Cat6 Wall-Mount PoE Patch Panel 12-Port 110/Krone 568A/B RJ45 | 10.00 | $54.45 | **$544.50** * |
| Product | C6-CMP-SLD-WH Black Box CAT6 250-MHz Solid Ethernet Bulk Cable - Unshielded (UTP), CMP Plenum, White, 1000-ft. (304.8-m) Pull-Box | 6.00 | $575.14 | **$3,450.84** * |
| Product | G2X2LG6 Panduit Panduit Wiring Duct; Slotted; PVC; 2"X2"X6'; Light Gray; Cover not included Price Per Foot | 66.00 | $8.13 | **$536.58** * |
| Product | C2LG6 Panduit Panduit Duct Cover; PVC; 2"W X 6'; Light Gray Price Per Foot | 66.00 | $2.41 | **$159.06** * |
| Product | 00776. C2G 3ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 36.00 | $7.00 | **$252.00** * |
| Product | 00777. C2G 4ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 35.00 | $7.00 | **$245.00** * |
| Product | 00778. C2G 5ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 25.00 | $7.00 | **$175.00** * |
| Product | 00779. C2G 6ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 25.00 | $7.50 | **$187.50** * |

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| Product | 00780. C2G 7ft Cat6 Snagless Shielded (STP) Network Patch Ethernet Cable - Gray | 25.00 | $8.00 | **$200.00** * |
| Product | 00781. C2G 8ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 25.00 | $9.00 | **$225.00** * |
| Product | 00782. C2G 9ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 25.00 | $10.50 | **$262.50** * |
| Product | 00783. C2G 10ft Cat6 Snagless Shielded (STP) Network Patch Ethernet Cable - Gray | 25.00 | $11.50 | **$287.50** * |
| Product | 00784. C2G 12ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 25.00 | $13.50 | **$337.50** * |
| Product | 00786. C2G 15ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 25.00 | $14.50 | **$362.50** * |
| Product | 00787. C2G 20ft Cat6 Snagless Shielded (STP) Network Patch Ethernet Cable - Gray | 15.00 | $15.50 | **$232.50** * |
| Product | 00788. C2G 25ft Cat6 Snagless Shielded (STP) Network Patch Ethernet Cable - Gray | 15.00 | $18.70 | **$280.50** * |
| Product | 00789. C2G 30Ft Cat6 Snagless Shielded (STP) Network Patch Cable - Gray | 10.00 | $19.80 | **$198.00** * |
| Product | EVNSL0649A-1000. Black Box Gigatrue 550 CAT6, 550-MHz Stranded Bulk - Orange | 3.00 | $295.95 | **$887.85** * |
| Product | EVNSL0641A-1000. Black Box 1000-FT GigaTrue 550 CAT6 Stranded Bulk Cable - Blue | 3.00 | $295.95 | **$887.85** * |
| Product | EVNSL0650A-1000. Black Box Gigatrue 550 CAT6, 550-MHz Stranded Bulk - White | 1.00 | $295.95 | **$295.95** * |
| Product | JPMT1048A. Black Box GIGASTATION2 High-Density Multimedia Pat | 2.00 | $122.99 | **$245.98** * |
| Product | FMT631-R3-25PAK. Black Box GIGATRUE2 CAT6 Jacks, Universal Wiring | 2.00 | $136.24 | **$272.48** * |
| Product | Belden 7916A - RG6 Quad Shield PVC Coax - 1000' Reel | 1.00 | $580.00 | **$580.00** * |
| Product | 100010B EZ-RJ45 CAT6 Connector. 100/Box. | 4.00 | $74.96 | **$299.84** * |
| Product | CCP0.50BK - FLEXO CLEAN CUT® - 1/2" - BLACK - 500 FT SPOOL | 1.00 | $200.00 | **$200.00** * |
| Product | CCP0.75BK - FLEXO CLEAN CUT® - 3/4" - BLACK - 250 FT SPOOL | 2.00 | $125.00 | **$250.00** * |
| Product | CCP1.00BK - FLEXO CLEAN CUT® - 1" - BLACK - 250 FT SPOOL | 1.00 | $150.00 | **$150.00** * |
| Product | VSF8.00BK - VELCRO® BRAND ONE-WRAP® - FR UL PLENUM RATED STRAPS - 3/4" X 8" - BLACK | 1.00 | $125.00 | **$125.00** * |
| Product | VSF12.0BK - VELCRO® BRAND ONE-WRAP® - FR UL PLENUM RATED STRAPS - 3/4" X 12" - BLACK | 1.00 | $175.00 | **$175.00** * |
| Product | VSF18.0BK - VELCRO® BRAND ONE-WRAP® - FR UL PLENUM RATED STRAPS - 3/4" X 18" - BLACK | 1.00 | $175.00 | **$175.00** * |

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| Product | Thomas & Betts TY25MX Cable Tie 50lb 7" Ultraviolet Resistant Black Nylon with Stainless Steel Locking Device Bulk Pack (1000 Pack) | 2.00 | $90.00 | **$180.00** * |
| Product | iexcell 100 Pcs Black 9 mm Cable Tie Base Saddle Type Mount Wire Holder | 2.00 | $12.00 | **$24.00** * |
| Product | Canare L-4E3-24P 100M 24-Channel Star Quad Microphone Cable (328' / 100 m) | 1.00 | $4,466.00 | **$4,466.00** * |
| Product | Neutrik NPPA-S Strain Relief bar | 1.00 | $105.00 | **$105.00** * |
| Product | ----- | 1.00 | $0.00 | **$0.00** * |
| Product | **Samsung UN50AU8000FXZA** Samsung 50" AU8000 Black Crystal UHD 4K Smart TV | 1.00 | $492.79 | **$492.79** * |
| Product | **Chief TV Mounts Chief LTM1U** Fusion Series Tilting Landscape Wall Mount for 37 to 63" Displays | 1.00 | $337.70 | **$337.70** * |
| Product | HDMI | 1.00 | $0.00 | **$0.00** * |
| Product | Display Port | 1.00 | $0.00 | **$0.00** * |
| Product | Tripp Lite Model U022-015 15ft USB 2.0 Certified A/B Cable with Gold Connectors USB Extenders | 24.00 | $6.37 | **$152.88** * |
| Product | Tripp Lite Model U024-006 6ft USB 2.0 Gold Extension USB A M/F | 16.00 | $4.69 | **$75.04** * |
| Product | Tripp Lite P568-010-BK-GRP High-Speed HDMI Cable, Gripping Connectors - 4K, M/M, Black, 10 ft. | 8.00 | $9.94 | **$79.52** * |
| Product | Tripp Lite Part# P569-015-CERT 15FT Premium HDMI Cable with Grip Connector | 8.00 | $17.24 | **$137.92** * |
| Product | Tripp Lite Part# P568-012-BK-GRP Tripp Lite High-Speed HDMI Cable, Gripping Connectors - 4K, M/M, Black, 12 ft. | 4.00 | $17.41 | **$69.64** * |
| Product | Tripp Lite Part# P568-020-BK-GRP Tripp Lite High-Speed HDMI Cable, Gripping Connectors - 1080p, M/M, Black, 20 ft | 4.00 | $26.84 | **$107.36** * |
| Product | Tripp Lite Part# P568-025-BK-GRP High-Speed HDMI Cable, Gripping Connectors - 1080p, M/M, Black, 25 ft | 8.00 | $32.07 | **$256.56** * |
| Product | Tripp Lite Part# P006-003 Computer Power Extension Cord Cable Adapter 10A 18AWG 5-15P to C13 3' | 20.00 | $8.48 | **$169.60** * |
| Product | Tripp Lite Part# P007-003 Heavy Duty Computer Power Extension Cord Cable 14AWG 15A 5-15P C13 3' | 20.00 | $8.62 | **$172.40** * |
| Product | Tripp Lite Part# P006-004 Computer Power Extension Cord Cable Adapter 10A 18AWG 5-15P to C13 4' | 20.00 | $10.44 | **$208.80** * |
| Product | Tripp Lite Part# P019-004 Heavy Duty Power Extension Cord Cable 15A 14AWG 5-15P to C15 4' 4ft | 20.00 | $19.03 | **$380.60** * |
| Product | Tripp Lite Part# P007-010 Heavy Duty Computer Power Extension Cord Cable 14AWG 15A 5-15P C13 10' | 10.00 | $12.57 | **$125.70** * |
| Product | Tripp Lite Part# P006-015 Computer Power Extension Cord Adapter 10A 18AWG 5-15P to C13 15ft | 20.00 | $13.20 | **$264.00** * |

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|---|---|---|---|---|
| Product | Tripp Lite Part# P006-004-RD Computer Power Extension Cord Cable 10A 18AWG 5-15P C13 Red Plugs 4' | 15.00 | $5.38 | **$80.70** * |
| Product | Ballast | 1.00 | $454.80 | **$454.80** * |
| Product | ---- | 1.00 | $0.00 | **$0.00** * |
| Product | **Cisco RCKMNT-19-CMPCT=** Cisco rack mounting kit - 19" | 3.00 | $65.83 | **$197.49** * |
| Product | Brady Authentic (M21-750-499) Multi-Purpose Nylon Label for General ID, Wire Marking, and Lab, Black on White- Designed for M210, M210-LAB, M211, BMP21-PLUS and BMP21-LAB Printers, .75" W 16' L | 4.00 | $37.35 | **$149.40** * |
| Product | Brady Authentic (M21-750-595-BL) All-Weather Vinyl Label for Indoor/Outdoor ID, Lab and Equipment Labeling, White on Blue- For M210, M210-LAB, M211, BMP21-PLUS and BMP21-LAB Printers, .75" W, 21' L | 1.00 | $31.25 | **$31.25** * |
| Product | Brady Authentic (M21-750-595-RD) All-Weather Vinyl Label for Indoor/Outdoor ID, Lab and Equipment Labeling, White on Red- For M210, M210-LAB, M211, BMP21-PLUS and BMP21-LAB Printers, .75" W, 21' L | 1.00 | $31.15 | **$31.15** * |
| Product | Brady Authentic (M21-500-499) Multi-Purpose Nylon Label for General ID, Wire Marking, and Lab Labeling, Black on White- For M210, M210-LAB, M211, BMP21-PLUS and BMP21-LAB Printers, .5" W 16' L | 3.00 | $32.25 | **$96.75** * |
| Product | H3N0.38BK - SHRINKFLEX® POLYOLEFIN HEATSHRINK TUBING - 3:1 - 3/8" - BLACK - 200 FT SPOOL | 1.00 | $121.00 | **$121.00** * |
| Product | H3N0.50BK - SHRINKFLEX® POLYOLEFIN HEATSHRINK TUBING - 3:1 - 1/2" - BLACK - 200 FT SPOOL | 1.00 | $142.80 | **$142.80** * |
| Product | **Broadcast Tools COP-2/RJ** | 4.00 | $63.42 | **$253.68** * |
| Product | Middle Atlantic EB1CP12 EB Series Flanged Blank Panel 12-Piece Contractor Pack EB1CP12 | 5.00 | $119.29 | **$596.45** * |
| Product | Middle Atlantic EB2CP12 EB Series Flanged Blank Panel 12-Piece Contractor Pack EB2CP12 | 5.00 | $182.25 | **$911.25** * |
| Product | Middle Atlantic HW500 10-32 3/4" Classic Philips Trim-Head Screws & Washers 500 Pieces | 3.00 | $199.26 | **$597.78** * |
| Product | Misc Materials Budget | 1.00 | $450.00 | **$450.00** * |
| Product | **dezineworks Custom Furniture Design** - Studio Furniture Design, Visualization and Construction Drawings | 1.00 | $3,500.00 | **$3,500.00** * |
| Product | PAD WRAP DELIVERY - LAMINATE ROOMS | 1.00 | $4,166.67 | **$4,166.67** * |
| Product | PAD WRAP DELIVERY - SOLID SURFACE ROOM | 1.00 | $3,333.33 | **$3,333.33** * |
| Product | Herman Miller Aeron Chair | 5.00 | $1,275.00 | **$6,375.00** * |
| Product | Herman Miller Aeron Stool | 8.00 | $1,855.00 | **$14,840.00** * |
| Service | **Public Media Engineering (PME) will Install, Setup and Integrate The KBEM Broadcast Studio System as specified.**<br><br>PME Staff will conduct the work proposed in the stated Scope of Work for: $99,738.00 | 1.00 | $99,738.00 | **$99,738.00** |

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-Includes all onsite and offsite labor and travel expenses.

-Planned onsite visits prior to PME onsite engineering and integration services.

-Planned office days with supporting staff.

**General Recording and Broadcast Equipment and Systems**

-PME will collaborate with current KBEM engineering staff on design requirement and potential technological advancements being employed at other facilities.

-Collaborate with KBEM Staff, Architects and other consultants on Studio Design, Acoustic Treatments, Equipment, and Infrastructure.

-Document current systems, configurations, wiring, procedures, and techniques.

-Coordinate onsite visits and weekly virtual meetings.

-Designs and installations to include significant redundancy and ease of maintenance and troubleshooting.

-Work with KBEM on IT infrastructure needs.

-Specify and design redundant broadcast phone system with multiple gateways and SIP providers. Coordinate needs with KBEM Telco Brokers and Providers.

-Investigate and travel to KBEM Sites to understand current system systems and backup systems in place.

PME will propose and design plans to allow KBEM the ability to move on time without disruption to core service and listeners.

**Maintain High Technical Standards**

-Perform work to professional standards of safety, reliability, and appearance.

-Develop and perform tests to evaluate performance of broadcast systems.

-Suggest changes in equipment or procedures for higher quality or efficiency.

-Ensure designs are in compliance with local municipalities, FCC, FAA, EPA, OSHA standards and other regulations.

-Inform of any difficulties encountered.

**Technical Liaison**

-Communicate effectively with all personnel and departments.

-Develop specifications to be met and provide feedback on results.

-Gantt Chart Project Management Timelines.

**The KBEM AoIP Network** CAT6 Cable Installation, Termination and Certification.

-Pull new shielded Category 6, analog, and AES cabling, dress and secure
-Terminate new Category 6 network cabling by EIA/TIA 568B standards as needed
-Certify all PME and Low Voltage Contractor Category 6 network

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cabling with Fluke Certifier and provide certification report following installation.
-Install appropriate cable management and strain relief
-Test, and certify all installed cabling with Cable Analyzer

**The KBEM H168M CR Studio 1; H168N CR Studio 2; H168B Studio 3; H168A MPS Voices Studio**

Public Media Engineering (PME) will manage, design, install, integrate, and configure The KBEM Recoding and Broadcast System specified

-Includes all onsite and offsite labor, food, travel and lodging expense
-Planned onsite visits prior to PME onsite engineering and integration services
-Planned PME office days with supporting staff
-Includes cost to rebuild, install and integrate

-Install new certified Category 6 patch cables
-Install and configure Cisco Edge Switches per AXIA Livewire Standards
-Install and configure Axia broadcast console systems and associated studio engines and nodes
-Rack and install all Recording / Broadcast Studio Equipment as listed below. Including power, audio, grounding as needed
-Microphone processors and or preamps
-Digital Playback and Automation Workstations
-KVM extenders
-Audio Editing Workstations and associated hardware
-Headphone amplifiers and nearfield monitor speakers
-Overhead displays
-Mika Microphone Arm and Mounting Solutions
-Install and configure Telos VX Phone Hybrid Systems
-Installation and Setup of ESE Master Clock Systems
-Installation and Setup of Profanity Delay
-Install Overhead Hallway Speakers
-Install Security Cameras in Hallways and Rooftop
-Acoustical Panel Installations
-Wide Orbit Automation System Installation and Migration
-IP STL System and Data Infrastructure Commissioning

**KBEM TOC / IDF**

Public Media Engineering (PME) will manage, design, install, integrate, and configure The KBEM Recoding and Broadcast System specified

-Includes all onsite and offsite labor, food, travel and lodging expense
-Planned onsite visits prior to PME onsite engineering and integration services
-Planned PME office days with supporting staff
-Includes cost to rebuild, install and integrate TOC

KBEM TOC / IDF
-Install new certified Category 6 patch cables
-Rack and install all Recording / Broadcast Studio Equipment as listed below. Including power, audio, grounding and remote start cabling as needed
-Install and configure Cisco Core Switches per AXIA Livewire Standards
-Install and configure Axia Nodes
-Install and configure Telos iProfiler Automatic Audio Recording System
-Install and configure Axia Pathfinder Systems
-Digital Playback and Automation Workstations
-KVM extenders
-Audio Editing Workstations and associated hardware

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| | -Install and Configure all Comrex Audio Codecs<br>-Rack and install all computers and network hardware and switches<br>-System migration, transfer and cutover<br>-Install and configure Telos VX Phone Hybrid Systems<br>-Install and configure Telos Infinity Intercom Systems<br>-Installation and Setup of ESE Master Clock Systems<br>-Installation, Setup and Commission of Burk Remote Control and System Wide Monitoring and Alerting<br><br>**KBEM SATELLITE**<br>-Installation of Non-Penetrating Rooftop Mount<br>-Move ballast to rooftop<br>-Assemble DH Satellite Antenna<br>-Aim and Peak Antenna to PRSS Main and Alternate Satellite; Mark Alternate Setup<br>-Setup Dish Heater | | | |
| Service | 1600 Utica Temporary Studio Decommissioning and Demo | 1.00 | $10,270.00 | **$10,270.00** |
| Product | 2001-00552-601: One Year TelosCare PLUS SLA for Quasar table-top frame 4.5U, w/1 Power Supply TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 4.00 | $99.00 | **$396.00** * |
| Product | 2001-00568-601: One Year TelosCare PLUS SLA for Quasar MTS-MON Module (Factory Installed) TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 4.00 | $129.00 | **$516.00** * |
| Product | 2001-00569-601: One Year TelosCare PLUS SLA for Quasar XR-4FAD Module, Motorized (Factory Installed) TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 12.00 | $119.00 | **$1,428.00** * |
| Product | 2001-00584-601: One Year TelosCare PLUS SLA for Quasar Engine Base (16 Channel) TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 4.00 | $399.00 | **$1,596.00** * |
| Product | 3002-00098-601: One Year TelosCare PLUS SLA for 16 Channel Engine Expansion license; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 8.00 | $149.00 | **$1,192.00** * |
| Product | 2001-00515-601: One Year TelosCare PLUS SLA for Pathfinder Core PRO Broadcast Controller; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 2.00 | $1,249.00 | **$2,498.00** * |
| Product | 3002-00005-601: One Year TelosCare PLUS SLA for Pathfinder Core PRO Add-On 500 License; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 2.00 | $679.00 | **$1,358.00** * |
| Product | 2001-00298-601: One Year TelosCare PLUS SLA for Telos Alliance Analog xNode; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 12.00 | $169.00 | **$2,028.00** * |
| Product | 2001-00299-601: One Year TelosCare PLUS SLA for Telos Alliance AES/EBU xNode; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 7.00 | $169.00 | **$1,183.00** * |
| Product | 2001-00300-601: One Year TelosCare PLUS SLA for Telos Alliance Mixed Signal xNode; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 4.00 | $169.00 | **$676.00** * |
| Product | 2001-00297-601: One Year TelosCare PLUS SLA for Telos Alliance Microphone xNode; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 8.00 | $169.00 | **$1,352.00** * |

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| Product | 2001-00301-601: One Year TelosCare PLUS SLA for Telos Alliance GPIO xNode; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 4.00 | $159.00 | **$636.00** * |
| Product | 3001-00040-601: One Year TelosCare PLUS SLA for iProbe Network Management Software; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 1.00 | $89.00 | **$89.00** * |
| Product | 3001-00033-601: One Year TelosCare PLUS SLA for iProFiler Automated Program Archiving; TelosCare PLUS is an annual paid Service Level Agreement (SLA) for all Telos Alliance products. | 1.00 | $149.00 | **$149.00** * |
| Service | Telos Equipment Freight | 1.00 | $909.48 | **$909.48** * |
| Service | Satellite Dish and Mount Freight | 1.00 | $2,175.00 | **$2,175.00** * |
| Service | Materials Freight | 1.00 | $2,675.00 | **$2,675.00** * |
| Service | SCMS Freight | 1.00 | $7,000.00 | **$7,000.00** * |
| Service | Cisco Freight | 1.00 | $1,500.00 | **$1,500.00** * |
| Service | ATS Acoustic Panels Freight | 1.00 | $2,275.00 | **$2,275.00** * |

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|---|---|
| Subtotal | **$675,778.79** |
| Tax * (8.03%) | **$45,431.39** |
| **Quotation Total** | **$721,210.18** |

**Notes**

Terms:
-Labor 50% down payment on receipt of purchase order; 50% final payment Net 30 days on completion of work
-Equipment 50% down payment on receipt of purchase order; 50% final payment at shipment of product

Make all checks payable to PUBLIC MEDIA ENGINEERING LLC.
If you have any questions concerning this quotation contact **sales@pmeworks.com** or Peter Femal at 312.286.9918
**pfemal@pmeworks.com**

MINNEAPOLIS PUBLIC SCHOOLS
Urban Education. Global Citizens.

# Contract for Goods/Supplies/Materials and/or Labor/Installation

This Contract is entered into between Special School District No. 1, "District", a special school district created and existing under the laws of Minnesota, and Schwab Vollhaber Lubratt "Contractor" (collectively "parties") to renew 2 life-cycled out and failing condensing units at Windom School to Plant Maintenance.

## *1 TERM OF CONTRACT*

1.1 This Contract is effective on 2/26/2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 12/31/2024, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District's Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor's OWN RISK and as a volunteer.

## 2 SCOPE OF WORK

2.1 Contractor shall perform all of the services related to Labor and Installation set forth herein and any exhibits attached hereto as Exhibit A ("Scope of Work"). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

## 3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor

under this Contract shall be paid by District as described below.

*3.1 Total Obligation.*
District's total obligation to Contractor/Schwab Vollhaber Lubratt under this Contract, including compensation for goods and/or services, including reimbursable expenses (if applicable), shall not exceed $182,111. Contractor/Schwab Vollhaber Lubratt shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

*3.2 Frequency of Invoicing and Terms of Payment.*
Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable Exhibit B. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

*3.3 Taxes.*
District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

## 4. INSPECTION OF GOODS & REJECTION

4.1 Buyer is entitled to inspect the Goods upon delivery. If the Goods are unacceptable for any reason, Buyer must reject them at the time of delivery up to ten (10) business days from the date of delivery. If Buyer has not rejected the Goods within ten (10) business days from the date of delivery, Buyer shall have waived any right to reject that specific delivery of Goods.

4.2 In the event Buyer rejects the Goods, Buyer shall allow Seller a reasonable time to cure the deficiency. A reasonable time period shall be determined by industry standards for the Goods, as well as the Seller and Buyer.

## 5 RISK OF LOSS

5.1 Risk of loss will be on the Seller until the time when the Buyer accepts delivery. Seller shall maintain any and all necessary insurance in order to insure the Goods against loss at Seller's own expense.

## 6 TITLE

6.1 Title to the Goods will remain with the Seller until Buyer accepts delivery.

## 7 FORCE MAJEURE

7.1 Non-delivery or default of this Agreement due to labor disputes, transportation shortage, delay or shortage of materials to produce the Goods, fires, accidents, Acts of God, or any other causes outside of Seller's control shall be notified to Buyer immediately upon realization that it will not be able to deliver the Goods as promised. Either Party may terminate this Agreement upon such notice.

## 8 MATERIALS AND LABOR

Contractor shall provide and pay for all labor and equipment, including tools, construction equipment, machinery, transportation and all other facilities and services, and all materials necessary for the completion of the Work. All materials shall be good quality and new, unless the Contract Documents require or permit otherwise. Contractor may substitute materials only with the prior written approval of the District. (Check all that apply) Not Applicable

☐ The following materials will not be included in the Contract Price and are the sole responsibility of the District and will not be covered under warranty by Contractor:
_____ or attach annexure.

☐ In addition, the Contract Price shall include the following fixtures:
_____ or attach annexure.

## 9 LICENSES AND PERMITS

(Check one) ☒ Contractor ☐ District shall obtain all licenses and permits necessary for proper

completion of the Work. (Check one) ☒ Contractor ☐ District is responsible for the cost of any necessary permits or licenses.

## 10 LAWS AND REGULATIONS

Contractor shall perform the Work in a workmanlike manner and in compliance with all applicable federal, state, and local laws, regulations and ordinances, trade standards, ethical guidelines and any safety requirements of District (the "Applicable Laws"). Contractor shall promptly notify District upon discovery of any variance between the Applicable Laws and the Construction Documents.

## 11 SUPERVISION OF CONSTRUCTION

Contractor shall be solely responsible for and shall supervise and direct all construction under this Agreement. Contractor shall provide competent and suitable personnel to perform the Work and shall at all times maintain good discipline and order at the Property. Contractor will at all times take all reasonable precautions for the safety of its employees and the public at the Property. Contractor agrees to assume full responsibility for the acts, negligence, and/or omissions of its employees and any subcontractors and their employees.

## 12 RECORD DOCUMENTS

Contractor shall maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, and the like in good order and annotated to show all changes made during construction, which will be delivered to District upon completion of the Work. District shall have the right to inspect and review such documents upon notice to Contractor.

## 13 UTILITIES

→ Disconnect and Reconnect of Electrical. All Scope of work is included in the proposal.

(Check one) ☒ Contractor ☐ District shall pay for all permanent electric, water, phone, cable, sewer and gas service as needed to perform the Work. (Check one) ☒ Contractor ☐ District shall pay for the installation, connection and removal of all temporary utilities on the Property during the performance of the Work. All temporary utilities shall conform and adhere to the Applicable Laws.

## 14 HAZARDOUS MATERIALS

Except as otherwise provided in the Contract Documents, Contractor shall be responsible for all Hazardous Materials brought to the Property by Contractor. Hazardous Materials shall include radioactive materials, asbestos, polychlorinated biphenyls, petroleum products, crude oil, flammable materials, chemicals or solvents known to cause cancer or reproductive toxicity, pollutants, contaminants and toxic substances which are restricted, prohibited or regulated by any agency of government in its manufacture, use, maintenance, storage, Ownership or handling. If Contractor discovers any Hazardous Materials on the Property, Contractor shall immediately notify District and may cease working until the material or substance has been rendered harmless. District shall defend, indemnify and hold harmless Contractor, any subcontractors, and their respective agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from contact with the Hazardous Substance in performance of the Work

resulting in bodily injury, illness or death, or injury or property damage, provided such claim, damage, loss or expense is not the result of any negligent act or omission by the party seeking such indemnity.

## 15 CONDITION OF THE PROPERTY

Contractor agrees to keep the Property and adjoining driveways free and clear of waste material and rubbish. Contractor shall confine the storage of materials and equipment and the operations of employees to the Property, and shall not unreasonably encumber the Property with materials or equipment. Contractor shall be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the Property clean and ready for occupancy by District.

## 16 INSPECTION

District shall have a right to inspect the Work at any time and request that Contractor promptly correct any Work that is defective or does not conform to the Contract Documents. If required, the Work shall be inspected and certified by the appropriate state or local agency or health officer at each necessary stage.

## 17 SUBCONTRACTS

Contractor shall furnish to District a list of names of subcontractors proposed to perform principal portions of the Work. Contractor shall not employ any subcontractor to whom District reasonably objects. A subcontractor, for the purposes of this Agreement, shall be a person with whom Contractor has a direct contract for work at the Property. All contracts between Contractor and subcontractor shall be in accordance with the terms of this Agreement and the Contract Documents.

## 18 WORK CHANGES

District reserves the right to order changes to the Work in the nature of additions, deletions or modifications, without invalidating this Agreement, and agrees to make corresponding adjustments in the Contract Price and time of termination if applicable. All changes will be authorized in a written "Change Order" signed by District and Contractor, which shall be incorporated by reference herein.

## 19 OTHER CONTRACTORS

District reserves the right to enter into other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work shall not be impeded and shall give them access to the Property as necessary to perform their contracts.

## 20 EXTENSIONS OF TIME

The times stated in this Agreement may be extended for such reasonable time as Contractor may determine when performance of the Work by Contractor is delayed by a Change Order, labor disputes,

fire, unusual delay in deliveries, abnormal adverse weather conditions, unavoidable casualties, or other causes beyond Contractor's control or which justify the delay.

## 21 INDUSTRY LANGUAGE

The language used for terms of this Agreement, unless otherwise defined, shall be construed according to the customary meaning within the construction industry in the area where the Project is located and for the type of Work being performed.

## 22 CONFIDENTIALITY (Check one)

☐ As a result of Contractor's participation in the Work, Contractor will have access and contribute to information and materials of a highly sensitive nature, including Confidential Information. Contractor hereby warrants that Contractor and its employees and agents shall not (without in each instance obtaining the District's prior written consent) disclose, make commercial or other use of, or give or sell to any person, firm, or corporation, any Confidential Information received directly or indirectly from District or acquired or developed in the course of the performance of this Agreement unless: (1) required to do so pursuant to Applicable Laws (and then only after Contractor has given District prompt written notice of the legal compulsion and, at District's expense, provided by District with cooperation in any attempt District may make to gain a protective order acceptable to District); or (2) it is rightfully in the possession of Contractor from a source other than District prior to the time of disclosure of the information to Contractor under this Contract; or (3) it was in the public domain prior to the time of Contractor's receipt; or (4) it became part of the public domain prior to the time of Contractor's receipt by any means other than an authorized act or omission on the part of Contractor; or (5) it is supplied to Contractor after the time of Contractor's receipt by a third party who was not under any obligation to District to maintain such information in confidence; or (6) it was independently developed by Contractor prior to the time of its receipt from District. All Confidential Information, regardless of form, shall be the property of District and shall be returned to District upon its request, or in any event, at the completion or earlier termination of this Agreement.

☒ Contractor will NOT have access and contribute to Confidential Information.

## 23 GENERAL TERMS AND CONDITIONS

a. The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

## 24 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

a. T

he District is committed to the policy that all persons shall have equal access to its

programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for

training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

## 25 BACKGROUND CHECKS

a. Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C.Section 5119a and 42 U.S.C. Section 14501-05.
b. Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

## 26 DATA PRIVACY

a. Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

## 27 USE OF DISTRICT NAME OR LOGO

a. Contractor 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 District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

## 28 INDEPENDENT CONTRACTOR

a. Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

b. Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

## 29 WORKER HEALTH, SAFETY AND TRAINING

a. Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

## 30 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

a. Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

## 31 INSURANCE

a. At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above $1,000,000 per occurrence through umbrella or excess coverage. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards.

b. Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

c. Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

d. Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract, and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

e. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION ($1,000,000) for any one occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services or work under this Contract.

f. Contractor shall procure and maintain and shall cause any Subcontractor of the

Contractor to procure and maintain, the minimum insurance coverage listed herein. Such coverage shall be procured and maintained with forms and insurers acceptable to the Company/Client. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

g. A Certificate of Insurance shall be completed by the Contractor's Insurance Agent(s) as evidence that policies providing the required coverage, condition, and minimum limits are in full force and effect and shall be subject to review and approval by the Company/Client prior to commencement of any services under this Contract. The Certificate shall identify this Contract and shall provide that the coverage afforded under the policies shall not be cancelled, terminated, or materially changed until at least thirty (30) days prior written notice has been given to the Company/Client. The Certificate shall name Company/Client, its officers, and its employees as additional insured with respect to the General Liability Insurance.

h. Failure on the part of the Contractor or Subcontractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material Breach of Contract upon which the Company/Client may immediately terminate this Contract, or at its discretion, the Company/Client may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Company/Client shall be repaid by Contractor to the Company/Client upon demand, or Company/Client may offset the cost of the premium against any monies due to Contractor from the Company/Client.

i. Company/Client reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Contractor agrees to execute any and all documents necessary to allow the Company/Client access to any and all insurance and endorsements pertaining to this particular job.

j. Every policy required above shall be primary insurance, and any insurance carried by the Company/Client, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor. The Contractor shall be solely responsible for any deductible losses under the policies required above.

k. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Contract by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration or types.

l. As an independent contractor the Contractor is not entitled to Worker's Compensation benefits under the Company/Client plan. Furthermore, the Contractor is obligated to pay federal and state income tax on any monies' earned pursuant to this contractual relationship.

m. The parties hereto understand and agree that the Company/Client, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitation or any other rights, immunities, and protections provided by state and federal laws.

## 32 INDEMNIFICATION

a. Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

## 33 LIMITATION ON LIABILTY

a. In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

## 34 CONFLICT OF INTEREST/CODE OF ETHICS

a. Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

## 35 COMPLIANCE WITH LAWS AND DEBARMENT

a. Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes

debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

## 36 TERMINATION

a. The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

b. District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

c. Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contactor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

## 37 RETURN OF DATA

a. Within ten (10) days of the completion, termination of this Contract, or upon request of the District, whichever occurs first; Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Or, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

b. Within fifteen (15) days of the completion or earlier termination of this Contract,

or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

## 38 RECORDS MANAGEMENT AND MAINTENANCE

a. District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

## 39 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

**Special School District No. 1**

Attn: Plant Maintenance
Name: Grant Lindberg
Title: Manager
Email:
Grant.Lindberg@mpls.k12.mn.us
1225 N 7th Street
Minneapolis, MN 55411

**Vendor**

Name: Schwab Vollhaber Lubratt

Attn: SVL, Cameron Sjoen

Address: 2920 Centre Pointe Drive, Roseville MN 55113

Email: CamS@SVL.com

**40** ACKNOWLEDGMENT

a. In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

b. Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

**41** **NON-WAIVER**

a. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

**42** **ASSIGNMENT**

a. Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

**43** **CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT**

a. This Contract shall be construed under Minnesota law (without regard for choice

of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

## 44 WARRANTY

a. Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

b. Contractor warrants that the Work shall be in accordance with the Contract Documents, applicable law and trade standards and free from material structural defects, improper workmanship or defective materials. Contractor shall replace, correct, or repair any Work not in accordance with the Contract Documents, applicable law and trade standards or any defects caused by faulty materials, equipment or workmanship for a period of 1 year(s) from the date of completion of the Work. Nothing in this Section 15 shall be construed to place a time limit with respect to any other obligation Contractor may have under this Agreement.

1 year full Parts and Labor warranty.
Five year compressor parts only warranty.

## 45 SEVERABILITY

a. If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

**46 SURVIVABILITY**

a. The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

**SPECIAL SCHOOL DISTRICT NO. 1**

By: _____

Name:

(Printed)

Title: _____

Date: _____

**CONTRACTOR NAME**

By: Cameron Sigelan

Name: Cameron Sigelan
(Printed)

Title: Sales Engineer

Date: 2/20/2024

**EXHIBIT A: SCOPE OF WORK**

**Description of Services:**

To renew 2 life-cycled out and failing condensing units

**Service Outcome:**

2 new condensing units

**Method of Evaluation:**

Timely delivery and ensure quality materials used

## EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

The payment terms are as follows:

# FY21 North High School Phase 3

## Contract Sum: $253,650

## Contractor: Sonus Interiors

## Project Name and Number

North High School Phase 3 Work Scope 9C Ceilings and Acoustical Treatments
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $253,650 | accepted |
| **Alt #1: Toilets D140 & D240** | $0 | rejected |
| **Alt #2: Toilets D106 & D206** | $0 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $13,935 | rejected |
| **Alt #4: Auditorium Seating** | $0 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Sonus Interiors
6325 Sandburg Road, Suite 800
Golden Valley, MN 55427

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 9C Ceilings and Acoustical Treatments
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.


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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be two-hundred, fifty-three thousand, six hundred-fifty dollars ($ 253,650 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

**.5** Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**
**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**
**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and
**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**
**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
**.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

**ARTICLE 6 DISPUTE RESOLUTION**
**§ 6.1 Initial Decision Maker**
The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:


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*(Name, address, email address, and other information)*

Jessica Scrabeck
President
Sonus Interiors
6325 Sandburg Road, Suite 800
Golden Valley, MN 55427

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**.2** AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

**.3** AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30,2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All Specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors bidding documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* Jason Plumley |
| Ibrahima Diop Sr. Officer of Finance and Operations | Jason Plumley |
| *(Printed name and title)* | *(Printed name and title)* |


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# *Additions and Deletions Report for*
## *AIA® Document A132® – 2019*

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Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:29:35 CT on 01/30/2024.

**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Sonus Interiors
6325 Sandburg Road, Suite 800
Golden Valley, MN 55427

...

North High School Phase 3 Work Scope 9C Ceilings and Acoustical Treatments
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ – ] Not later than ( – ) calendar days from the date of commencement of the Work.~~

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be two-hundred, fifty-three thousand, six hundred-fifty dollars ($ 253,650 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract Sum:
Sum are defined in EXH-B Project Charter.

| Item | Price |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted below, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract Sum:Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if any:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)any are defined in EXH-B Project Charter.

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

**§ 4.3** Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum PriceAllowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

**§ 4.3.2** The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:

**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Jessica Scrabeck
President
Sonus Interiors
6325 Sandburg Road, Suite 800
Golden Valley, MN 55427

...

**§ 8.5** ~~Insurance and Bonds~~**Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30,2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All Specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

~~*[ – ] AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work*~~

[ ] ~~AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ ~~ ~~]~~ ~~The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors bidding documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:29:35 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____ day of ___January_____ in the year __2024____
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 9C Ceilings and Acoustical Treatments
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

Sonus Interiors 6325 Sandburg Road, Suite 800
Golden Valley, MN 55427

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions

### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

### ARTICLE A.2 OWNER'S INSURANCE

#### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.



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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
**.2** personal injury and advertising injury;
**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
**.4** bodily injury or property damage arising out of completed operations; and


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.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*


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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $253,650 |
| Performance Bond | $253,650 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:30:47 CT on 01/30/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____day of __January_____in the year __2024____

...

North High School Phase 3 Work Scope 9C Ceilings and Acoustical Treatments
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Sonus Interiors 6325 Sandburg Road, Suite 800
Golden Valley, MN 55427

**PAGE 2**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**PAGE 4**

**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.9** ~~If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.10** ~~Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.11** ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**§ A.3.2.12** ~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**PAGE 6**

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ – ] **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $253,650 |
| Performance Bond | $253,650 |

...

None

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# AIA® Document E203® – 2013

## *Building Information Modeling and Digital Data Exhibit*

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
*(Name and location or address of the Project)*

**TABLE OF ARTICLES**


1 GENERAL PROVISIONS

2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

3 DIGITAL DATA PROTOCOLS

4 BUILDING INFORMATION MODELING PROTOCOLS

5 OTHER TERMS AND CONDITIONS


**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project,.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

**§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.



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**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:
*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

**§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

**ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**

**§ 2.1** The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital


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Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows:
*(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| **Anticipated Digital Data** | **Applicability to the Project** *(Indicate Applicable or Not Applicable)* | **Location of Detailed Description** *(Section 3.1.1 below or in an attachment to this exhibit and identified below)* |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*


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*(Paragraph deleted)*
§ .

**§ 3.2.3** The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

**§ 3.4 Unauthorized Use**

**§ 3.4.1 Prior to Establishment of Digital Data Protocols**

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 3.4.2 Following Establishment of Digital Data Protocols**

Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

**§ 3.5 Digital Data Management**

**§ 3.5.1** Centralized electronic document management system use on the Project shall be:
*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

[ ] The Parties do not intend to use a centralized electronic document management system on the Project.

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.
*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

| Responsible Project Participant | Project Milestone |
|---|---|
| Contractor | Project Construction begins |

## ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

**§ 4.1** If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:


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[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

**§ 4.2 Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

| Project Portion for Modeling | Responsible Project Participant |
|---|---|
| Project design | Architect |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.
*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**§ 4.5 Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

**§ 4.5.1** The Modeling protocols shall address the following:

**.1** Identification of the Model Element Authors;
**.2** Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
**.3** Identification of the required LOD of each Model Element at each identified Project milestone;
**.4** Identification of the construction classification systems to be used on the Project;
**.5** The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
**.6** The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
**.7** Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
**.8** Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
**.9** Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

None


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*(Paragraph deleted)*
§ .

**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

**§ 4.7 Unauthorized Use**

**§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

**§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

| Responsible Project Participant | Project Milestone |
|---|---|

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- **.1** Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
- **.2** Model file storage location(s)
- **.3** Processes for transferring and accessing Model files
- **.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.
- **.5** Processes for aggregating Model files from varying software platforms
- **.6** Model access rights
- **.7** Identification of design coordination and clash detection procedures.
- **.8** Model security requirements
- **.9** Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- **.1** Collect incoming Models:
  - **.1** Coordinate submission and exchange of Models
  - **.2** Create and maintain a log of Models received


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.3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
.4 Maintain a record copy of each Model file received

.2 Aggregate Model files and make them available for Authorized Uses
.3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
.4 Manage Model access rights
.5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and AutoCAD

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model | Applicability to Project *(Applicable or Not Applicable)* | Responsible Project Participant | Location of Detailed Description of Requirements and Services *(Section 4.10 below or in an attachment to this exhibit and identified below)* |
|---|---|---|---|
| **§ 4.9.1** Remodeling | Applicable | Owner | |
| **§ 4.9.2** Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** Energy Management | Applicable | Owner | |
| **§ 4.9.5** Space Management | Applicable | Owner | |
| **§ 4.9.6** Maintenance Management | Applicable | Owner | |
| | | | |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

**ARTICLE 5 OTHER TERMS AND CONDITIONS**

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.


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# *Additions and Deletions Report for*

## *AIA® Document E203® – 2013*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:32:49 CT on 01/30/2024.

**PAGE 1**

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the ~~Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.~~ Project,.

...

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**PAGE 2**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~ .

...

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~3.

**PAGE 3**

| | | |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |

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| | | |
|---|---|---|
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

**§ 3.2.2** ~~The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.~~

**§** .

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data ~~protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.~~ protocols.

...

Following agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[ **X** ] The Parties intend to use a centralized electronic document management system on the Project.

...

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth ~~in the latest version of G201–2013 approved~~ d by the Project Participants.

...

Contractor Project Construction begins

**PAGE 5**

[ **X** ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design Architect

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project ~~Participants and further described for each LOD in AIA Document G202–2013.~~

Participants.

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Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

...

None

~~**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.~~

**§** .

**PAGE 6**

Following agreement to, and documentation of, the Modeling ~~protocols in AIA Document G202–2013,~~ protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

**.1** Model origin point, coordinate system, precision, file formats and ~~units~~units. The model shall be accurately geo-located to agreed-upon reference datum

...

**.4** Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**PAGE 7**

Transmit to MPS the model in PDF, Revit and AutoCAD

...

| | | | | |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |

...

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

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As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:32:49 CT on 01/30/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/30/2024

*(Dated)*

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# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 9C Ceilings and Acoustical Treatments

This work scope includes all ceilings and acoustical treatments work for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $253,650

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $0 | Rejected |
| **Alt#2: Toilets D106 & D206** | $0 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $13,935 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 9C Ceilings and Acoustical Treatments

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School:  September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on the dates provided above.

MINNEAPOLIS
PUBLIC SCHOOLS
Urban Education. Global Citizens.

# CONTRACT FOR SERVICES – $25,000 above

This Contract is entered into between Special School District No. 1, "District", a special school district created and existing under the laws of Minnesota, and St. Paul Linoleum "Contractor" (collectively "parties") to provide Athletic Floors to Wilder Complex Gym #1 & Gym #2

## TERM OF CONTRACT

1.1 This Contract is effective on 2/20/2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 2/20/2025, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District's Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor's OWN RISK and as a volunteer.

## 2 SCOPE OF WORK

2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** ("Scope of Work"). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

## 3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 ***Total Obligation***

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed $172,413.75. Contractor shall

not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 ***Frequency of Invoicing and Terms of Payment***

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 ***Taxes.***

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 ***Fund Availability; Federal Funds Contingency.***

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations

are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

## 4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

## 5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

## 6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C.Section 5119a and 42 U.S.C. Section 14501-05.

6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

## 7 DATA PRIVACY

7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

## 8 OWNERSHIP OF MATERIAL

8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

## 9 USE OF DISTRICT NAME OR LOGO

9.1 Contractor 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 District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

## 10 INDEPENDENT CONTRACTOR

10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this

Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

## 11 WORKER HEALTH, SAFETY AND TRAINING

11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

## 12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

## 13 INSURANCE

13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above $1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract

and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

## 14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

## 15 LIMITATION ON LIABILTY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

## 16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

## 17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

## 18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contactor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

## 19 RETURN OF DATA

19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

## 20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the

performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

## 21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

**Special School District No. 1**

Division: Capital Planning, Construction, and Maintenance
Attn: Ann Cerney, Project Manage
1250 W Broadway
Minneapolis, MN 55411
Email: ann.cerney@mpls.k12.mn.us

**CONTRACTOR**

St. Paul Linoleum & Carpet Co., Attn: Joe St. Clair
Phone: 612-501-6219
Address: 2956 Center Court, Eagan, MN 55121
Email: Joes@splino.com

**ACKNOWLEDGMENT**

21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

## 22 NON-WAIVER

22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

## 23 ASSIGNMENT

23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

## 24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

## 25 WARRANTY

25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all

defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

## 26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

## 27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

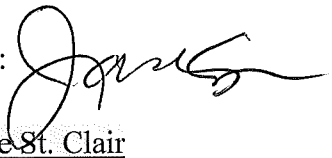
Name: Ibrahima Diop

(Printed)

Title: Senior Finance & Operations Officer

Date: _____

**CONTRACTOR NAME**

Signature: 

Name: Joe St. Clair

(Printed) Joe St. Clair

Title: Project Manager

Date: 2/20/2024

**Exhibit A:**

**Deliverables:**

Labor, materials, equipment, and incidentals to furnish and install 11,935 SY Athletic Flooring as manufactured by Gerflor, Recreation 60, include 4" vinyl cove base in Wilder Complex Gyms #1 and #2. Includes stripping for basketball, volleyball, and 3 pickleball courts in each gymnasium per St. Paul Linoleum proposal dated 2/16/2024.

**Service Outcome:**

Athletic floors installed complete

**Method of Evaluation:**

Punchlist inspection with Project Manager, Sr. Custodian, and Stakeholders

[The remainder of this page intentionally left blank.]

**EXHIBIT B: PAYMENT TERMS**

If there are exhibits to describe the payment terms:

MPS Standard Terms and Conditions

[The remainder of this page intentionally left blank.]

# FY21 North High School Phase 3

## Contract Sum: $144,000

## Contractor: Summit Fire Protection

## Project Name and Number

North High School Phase 3 Work Scope 21A Fire Protection
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $144,000 | accepted |
| **Alt #1: Toilets D140 & D240** | $3,400 | rejected |
| **Alt #2: Toilets D106 & D206** | $3,400 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $8,700 | rejected |
| **Alt #4: Auditorium Seating** | $0 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Summit Fire Protection
575 Minnehaha Avenue W
St Paul, MN 55103

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 21A Fire Protection
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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**User Notes:**
(1782018636)

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EXHIBIT B DETERMINATION OF THE COST OF THE WORK


## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.



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User Notes:
(1782018636)

[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

## ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

**§ 4.2 Stipulated Sum**

**§ 4.2.1** The Contract Sum shall be One-hundred, forty-four thousand dollars ($ 144,000 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**

**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*

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§ 4.3 Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 4.4 Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
§ 4.5 Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

§ 4.6 Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of

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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

.5 Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**

**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**

**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and

.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**

**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

## ARTICLE 6 DISPUTE RESOLUTION

**§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.

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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:

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*(Name, address, email address, and other information)*

Jacob Kangas

Summit Fire Protection
575 Minnehaha Avenue W.
St Paul, MN 55103

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

.1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

.2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

.3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

.5 Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

.6 Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

.7 Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*
*(Table deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors bid documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | Frank Doolittle Fire Sprinkler Manager |
| *(Printed name and title)* | *(Printed name and title)* |


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# Additions and Deletions Report for
## AIA® Document A132® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 January

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Summit Fire Protection
575 Minnehaha Avenue W
St Paul, MN 55103

...

North High School Phase 3 Work Scope 21A Fire Protection
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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§ 1.2 In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

§ 1.3 Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.



[ X ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~Portion of Work~~ ~~Substantial Completion Date~~

~~§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete~~

~~§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~

~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ ] Not later than ( ) calendar days from the date of commencement of the Work.~~

~~[ ] By the following date:~~

~~§ 3.4.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~Portion of Work~~ ~~Date to be substantially complete~~

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~

~~*(Check the appropriate box.)*~~

~~[ ] Stipulated Sum, in accordance with Section 4.2 below~~

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[ ] ~~Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

[ ] ~~Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*~~
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be One-hundred, forty-four thousand dollars ($ 144,000 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract ~~Sum:~~
Sum are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Price~~ |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted ~~below, the following~~ in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract ~~Sum:~~Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if ~~any:~~
~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~any are defined in EXH-B Project Charter.

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

**§ 4.3** ~~Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
~~**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~**§ 4.3.2** The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

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§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.

§ 4.3.6 Unit prices, if any:
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum PriceUnit prices, if any, are defined in EXH-B Project Charter.
§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.4.2 The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

§ 4.4.7 Guaranteed Maximum Price
§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 4.4.7.2 Alternates
§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

| Item | Price |
|---|---|

§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:
*(Identify each allowance.)*

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~



Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

§ 5.1.4.3 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~.1 The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~.2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~.3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~.1 The aggregate of any amounts previously paid by the Owner;~~
- ~~.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Retainage withheld pursuant to Section 5.1.7.~~

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~~§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

~~§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~

~~§ 5.1.5.6 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.~~

~~§ 5.1.5.7 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.~~

~~**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**~~

~~§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.~~

~~§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.~~

~~§ 5.1.6.2.1 The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

~~§ 5.1.6.2.2 The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.~~

~~§ 5.1.6.2.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.~~

~~§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ 5.1.6.4 In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~§ 5.1.6.4.1 The amount of each progress payment shall first include:~~

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).



Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

.2 a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.
§ 6.1.1 Mediation
The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

~~.1 Take the Cost of the Work incurred by the Contractor to the date of termination;~~

~~.2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~

~~.3 Subtract the aggregate of previous payments made by the Owner; and~~

~~.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232–2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Jacob Kangas

...

Summit Fire Protection
575 Minnehaha Avenue W.
St Paul, MN 55103

...

**§ 8.5 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

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~~§ 8.9 Prevailing Wage~~

Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™ 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.



email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |



EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule

[ ] ~~AIA Document A132™ 2019, Exhibit B, Determination of the Cost of the Work~~

[ ] ~~AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235 2019 incorporated into this Agreement.)*~~

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(1782018636)

~~[ ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors bid documents

...

Ibrahima Diop Sr. Officer of Finance and Operations

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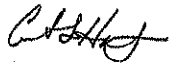
# Certification of Document's Authenticity

## AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 07:32:47 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.



*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/31/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 31st day of January in the year 2024
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 21A Fire Protection
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

Summit Fire Protection 575 Minnehaha Avenue W.
St Paul, MN 55103

**TABLE OF ARTICLES**


A.1 GENERAL

A.2 OWNER'S INSURANCE

A.3 CONTRACTOR'S INSURANCE AND BONDS

A.4 SPECIAL TERMS AND CONDITIONS


**ARTICLE A.1 GENERAL**

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

**ARTICLE A.2 OWNER'S INSURANCE**

**§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ A.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions


Init. /

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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance,** for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance,** for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance,** to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance,** for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance,** for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance,** to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

## ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
.2 personal injury and advertising injury;
.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and

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.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*



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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $144,000 |
| Performance Bond | $144,000 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# Additions and Deletions Report for
## AIA® Document A132® – 2019 Exhibit A

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**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 31st day of January in the year 2024

...

North High School Phase 3 Work Scope 21A Fire Protection
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Summit Fire Protection 575 Minnehaha Avenue W.
St Paul, MN 55103

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**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

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§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

§ A.3.2.5 Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

§ A.3.2.7 ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

§ A.3.2.8 ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

~~§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

§ A.3.3.2 The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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~~*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*~~

~~[ ] § A.3.3.2.1 If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:~~
~~*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*~~

~~[ ] § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for Work within fifty (50) feet of railroad property.~~

~~[ ] § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials.~~

~~[ ] § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.~~

~~[ ] § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.~~

~~[ ] § A.3.3.2.6 Other Insurance~~
~~*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*~~

~~Coverage~~ ~~Limits~~

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $144,000 |
| Performance Bond | $144,000 |

...

None

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# AIA® Document A232® – 2019

## *General Conditions of the Contract for Construction, Construction Manager as Adviser Edition*

**for the following PROJECT:**
*(Name, and location or address)*

North High School Phase 3 Work Scope 21A Fire Protection
1500 James Avenue, Minneapolis, MN 55411

**THE CONSTRUCTION MANAGER:**
*(Name, legal status, and address)*

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE ARCHITECT:**
*(Name, legal status, and address)*

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.

**§ 1.1.1.1** Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**§ 1.1.3 The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

**§ 1.1.7 The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**§ 1.1.8 The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.9 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.


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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

**§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

**§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

**§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to


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whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

**§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

**§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

**§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

**§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court


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or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

**§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.4** If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

**§ 2.3.5** If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 2.3.7** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.3.8** The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

**§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants'


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additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

**§ 3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.


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§ 3.2.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

§ 3.2.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

§ 3.2.4 If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.5 The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

§ 3.2.6 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

**§ 3.3 Supervision and Construction Procedures**

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.


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**§ 3.3.6** The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

**§ 3.3.7** The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

### § 3.4 Labor and Materials

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4** The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

**§ 3.4.5** In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

**§ 3.4.6** After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

**§ 3.4.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

### § 3.5 Warranty

**§ 3.5.1** The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents


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and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

**§ 3.5.3** Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

**§ 3.5.4** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.5** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

**§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**§ 3.7 Permits, Fees, Notices, and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager,


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determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of


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commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

**§ 3.11 Documents and Samples at the Site**

**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

**§ 3.12 Shop Drawings, Product Data, and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review


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by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must


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satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction


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Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

## ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

**§ 4.1.3** Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's consultants (1) during construction; (2) until final payment is due; and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.


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§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.2.2 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 **Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.


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**§ 4.2.9** Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

**§ 4.2.10** The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

**§ 4.2.11** The Architect will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.

**§ 4.2.12** Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.13** The Construction Manager will prepare Change Orders and Construction Change Directives.

**§ 4.2.14** The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.15** Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

**§ 4.2.16** The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

**§ 4.2.17** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.


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**§ 4.2.18** The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

*(Paragraph deleted)*

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written


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confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

**§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

**§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

**§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

**§ 6.1.3** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors


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shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not reasonably discoverable.

**§ 6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

**§ 6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or


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substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

.3 For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

.6 In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

### § 7.2 Change Orders and Change Proposals

**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum; and

.3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

### § 7.3 Construction Change Directives

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without

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invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on


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the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

### § 8.2 Progress and Completion

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.


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§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

.1 Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

.2 Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);

.3 Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

.4 Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

.5 Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

**§ 8.3 Delays and Extensions of Time**

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

.1 Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

.2 In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

.3 Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

.4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

.5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the


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Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**§ 8.3.4** The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

### § 9.3 Applications for Payment

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.


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**§ 9.3.1.2** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

**§ 9.3.1.4** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

**§ 9.3.4** In each Application for Payment, the Contractor shall certify as follows:

> "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

**§ 9.4 Certificates for Payment**

**§ 9.4.1** Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.


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**§ 9.4.2** Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 9.4.2.1** Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

**§ 9.4.3** The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.6** The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of


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.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor or other Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

**§ 9.6.3** The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.


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**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

**§ 9.7 Failure of Payment**

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect then the Contractor may, upon ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up which shall be accomplished as provided in Article 7.

**§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and when the Architect issues a Certificate of Substantial Completion.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.3** Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.


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**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner-Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents


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and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

### § 9.11 Damages for Delay

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the


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Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

**§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and

.4 construction or operations by the Owner, Separate Contractors, or other Contractors.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.


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**§ 10.3 Hazardous Materials**

**§ 10.3.1** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

.1 Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

.2 The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

*(Paragraph deleted)*

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.


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### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

**§ 11.1.4** In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.


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**§ 11.1.5** Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

**§ 11.1.6** The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors,


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Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Paragraph deleted)*

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

**§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.


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## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

**§ 12.1.1** If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby.

#### § 12.2.2 After Substantial Completion

*(Paragraphs deleted)*

**§ 12.2.2.1**If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.


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**§ 12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the


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Contractor shall give a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may observe procedures. The Owner shall bear such costs, except as provided in Section 13.4.3.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

**§ 13.4.5** If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.5 Interest**

All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.


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Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.1.5 No Right to Stop Work for Non-Payment

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10)


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days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of this Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

*(Paragraph deleted)*


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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

**§ 15.1.1 Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

**§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

**§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

**§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

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*(Paragraphs deleted)*

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

*(Paragraphs deleted)*

**§ 15.3 Mediation**

**§ 15.3.1** Any claim, dispute or other matter in question or arising out of or related to the Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

**§ 15.3.2** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

*(Paragraphs deleted)*


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## *AIA® Document A232® – 2019*

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**PAGE 1**

North High School Phase 3 Work Scope 21A Fire Protection
1500 James Avenue, Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street, Minneapolis, MN 55404

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

LSE Architects 1401 Glenwood Avenue
Minneapolis, MN 55405

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§ 1.1.1.1 Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or suppliers who provide labor and/or materials for the Work.

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**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The ~~Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2019.

...

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the ~~indicated~~ intended results.

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**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

...

**§ 1.4.1** In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

...

**§ 1.5.3** The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit,~~ Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol ~~Form,~~ Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or ~~authorization.~~ authorization in accordance with Owner's Delegation of Authority Policy, a copy of which will be provided at Contractor's request. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

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**§ 2.3.5** ~~The~~ If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.6** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-business-day (3) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~ Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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**§ 3.1.3** The Contractor shall ~~not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.~~ hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on the site. This shall not relieve Contractor from obligations under Article 3.

**§ 3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

**§ 3.2.1** ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally~~ The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, and shall immediately report to the Architect and Construction Manager errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors,

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inconsistencies, or omissions which the Contractor may discover. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, ~~and correlated personal observations with requirements of the Contract Documents.~~has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.1.1** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

**§ 3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Section 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

**§ 3.2.2** ~~Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Section 3.12.

**§ 3.2.3** The ~~Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.~~Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Filed Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

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§ 3.2.4 If the Contractor believes that ~~additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.5 The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

§ 3.2.6 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all Claims relating thereafter are specifically waived.

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§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any Work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act, nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.7 The Contract shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the Contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the Contractor.

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§ 3.4.4 The Contractor shall be responsible for all additional costs incurred to incorporate into the Project substitute materials, products, or equipment approved by Owner during the bidding period.

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§ 3.4.5 In the event of a Change related to substitute or additional materials, and which shall comply with Article 7, the Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available case discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

§ 3.4.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such Substitutions.

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§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

§ 3.5.3 Manufacturers' warranties and warranties by other shall not relieve the Contractor of any of its responsibilities.

§ 3.5.4 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

§ 3.5.5 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

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§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

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§ 3.7.3 If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume ~~appropriate~~ full responsibility for such Work and shall bear the ~~costs attributable~~

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~~to correction.~~attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation..

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than ~~14~~ ten (10) days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.
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**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work.~~ Work, including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

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**§ 3.9.3** The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.9.4** If requested by the Owner, the Contractor shall replace the superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

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**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones, including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.
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**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted in writing by the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

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~~The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~**§ 3.11.1** The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner as required to complete routine inspections by Architect, Construction Manager and Owner prior to any approval of payments to the Contractor, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

**§ 3.11.2** No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

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**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

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**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and ~~approved by the Architect.~~accepted by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with ~~approved~~ accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's ~~approval~~ acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written ~~approval~~ acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's ~~approval~~ acceptance thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's ~~approval~~ acceptance of a resubmission shall not apply to such revisions.

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**§ 3.13.3** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such

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facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

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**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

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**§ 3.15.1** The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor-generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.



**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall ~~indemnify~~ indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this Section 3.18.1. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this Section 3.18.1.

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**§ 3.18.3** To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when due and owing, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within sixty (60) days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

...

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's ~~representatives during construction until the date the Architect issues the final Certificate for Payment.~~ consultants (1) during construction; (2) until final payment is due; and (3) with the

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Owner's concurrence, from time to time during the correction period described in Section 12.2, The Architect and Construction Manager will advise and consult with the Owner. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract ~~Documents.~~Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the ~~portion of the Work completed,~~ Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work ~~observed~~ is being performed in a manner indicating that the Work, when ~~fully~~ completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.2.2 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by fault, neglect, or request of the Contractor.
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**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the ~~Owner.~~ Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect, Construction Manager and the Contractor to comply with Owner requirements in regards to public communications and site signage.

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**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.
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**§ 4.2.11** The Architect ~~will~~ will, and the Owner may, review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness~~ or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's or the Owner's completed review, the Architect shall transmit its submittal review to the Construction Manager.
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**§ 4.2.18** The Architect will interpret and decide matters concerning performance ~~under, and~~ under the requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness.~~ with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.18, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

**§ 4.2.19** ~~Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.~~Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.20** ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

~~**§ 4.2.21** The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

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**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any Subcontractor or use any material to which the Architect, Construction Manager or Owner may object. Prior to the employment of any Subcontractor, the Contractor must obtain the Owner's approval of such Subcontractor for the designated portion of the Work.

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**§ 5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time~~ The Contract Sum shall be increased or decreased by the ~~difference, if any,~~ difference in cost occasioned by such change, and an appropriate Change Order shall be ~~issued before commencement of the substitute Subcontractor's Work.~~ issued. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner, Construction Manager and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

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§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. Any proposed substitution of a Subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner, Construction Manager and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner, Construction Manager and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner, Construction Manager and Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.
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~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 The Contractor is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.
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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not ~~apparent.~~reasonably discoverable.

§ 6.2.3 ~~The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or~~

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~~defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.~~Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

...

**§ 6.2.5** ~~The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.~~Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

**§ 6.2.6** The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

...

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and ~~rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.~~rubbish as described in Section 3.15, the Owner may clean up allocate the cost among those responsible as the Architect determines to be just..

...

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. ~~An order for a minor change in the Work may be issued by the Architect alone.~~

...

**§ 7.1.4** The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner and Construction Manager. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

**§ 7.1.5** In Section 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor;

.3 For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor;

.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6;

.6 In order to facilitate checking of quotations for extras or credits, all proposals, expect those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

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**§ 7.2 Change Orders and Change Proposals**

~~A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:~~**§ 7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

**PAGE 21**

.3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Change Order shall be prepared on AIA Document G731.

**§ 7.2.3** The Contractor must submit Change Proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event, or Contractor's discovery of a condition, whichever is earlier, giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making Change Proposals. Change Proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and Site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractor's or Sub-subcontractor's overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change Proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor through a Construction Change Directive to proceed with the Work involved in the Change Proposal in accordance with Section 7.3 without accepting the Change Proposal in its entirety.

**§ 7.2.4** If the Owner determines that a Change Proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

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**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others;~~others (at rates approved by the Owner);

...

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective ~~immediately and shall be recorded as a Change Order.~~immediately.

...

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**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for ~~Payment.~~ Payment up to and not exceeding $25,000. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in ~~writing.~~ writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

...

**§ 8.1.4** The term "day" ~~as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.~~shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract ~~Time.~~Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents.

**§ 8.2.4** Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

**§ 8.2.5** Timely final completion of the Project is of critical importance to the Owner. The Contractor agrees that it shall substantially complete all Work under the Contract documents within the time established herein and that it shall finally complete the Work in the detail required and in the time required by the Contract Documents.

**§ 8.2.6** To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

**§ 8.2.7** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner and Construction Manager, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

.1 Require the Contractor to substantiate their capability to get back on schedule within two (2) days;

.2 Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets

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back on schedule as established by the CPM Schedule Report (including any updates thereto);

.3 Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;

.4 Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or

.5 Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: (1) planning for the next two weeks; (2) work completed for the previous week; (3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

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**§ 8.3.1** If the Contractor is delayed at any time in the ~~commencement or~~ progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5)~~ or (4) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect subject to the following:

.1 Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their Subcontractors and suppliers;

.2 In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;

.3 Any unusual delay in deliveries will not be considered unless it is solely due to transportation issues wholly outside of Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's control. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;

.4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given to Owner for unseasonably favorable weather;

.5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;

.6 No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or

.7 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

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§ 8.3.4 The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be~~ Before the first Application for Payment, the Contractor shall submit to the Architect and Construction Manager a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. ~~This~~ The schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner, Construction Manager and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment ~~prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required,~~ for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and ~~suppliers, and shall reflect retainage if provided for in the Contract Documents.~~material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G732–2019, Application and Certificate for Payment, supported by AIA Document G703–1992, Continuation Sheet.

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§ 9.3.1.2 ~~Applications for Payment~~ Such applications shall not include requests for payment ~~for portions of the Work for which the~~ of amounts the Contractor does not intend to pay a Subcontractor ~~or supplier,~~ or supplier because of a dispute or other reason, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Following certification of the Application for Payment by the Architect and Construction Manager, the Owner shall pay ninety-five percent (95%) of its value, retaining five percent (5%) until Final Completion.

§ 9.3.1.4 Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Section 9.3.1.4 shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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§ 9.3.4 In each Application for Payment, the Contractor shall certify as follows:

"That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

Notwithstanding the foregoing Section 9.3.4, Contractor acknowledges its obligation to provide a Payment Bond in accordance with the Contract Documents, and that Contractor's failure to pay any of its Subcontractors, Sub-subcontractors, suppliers, or laborers will be resolved through a claim under the Payment Bond.

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§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statutes, Section 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10.00. For an unpaid balance of less than $100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statutes, Section 471.425, subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorneys' fees incurred in bringing the action.

...

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty (30) days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect ~~or awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven~~ ten (10) additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and ~~start up, plus interest as provided for in the Contract Documents.~~start-up which shall be accomplished as provided in Article 7.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended ~~use.~~use and when the Architect issues a Certificate of Substantial Completion.

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**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or ~~corrected prior to final payment.~~ corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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**§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, pursuant to Minnesota Statutes, Section 15.72, for such Work or portion thereof as provided in the Contract Documents.

**§ 9.8.7** The Architect, assisted by the Construction Manager, shall make one (1) inspection for Substantial Completion and Final Completion in accordance with the AIA Document B101–2017 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

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**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ effect and will not be cancelled or allowed to expire until at least (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special

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warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6), if required by the Owner,~~ including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.
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**§ 9.11 Damages for Delay**

**§ 9.11.1** The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule. These damages are not included in liquidated damages and represent additional direct costs incurred by the Owner for the delay. These damages may include Owner incurred costs for temporary classrooms, temporary facilities, moving of programs, etc.

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~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.~~**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**§ 10.1.2** The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner, Construction Manager or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.
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If either party suffers injury or ~~damage~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ ten (10) days after ~~discovery.~~ first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 and 15.1.5.
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**§ 10.3.1** ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify~~ In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless,

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the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect ~~of the condition,~~in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

.1 Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.

.2 The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

**§ 10.3.2** ~~Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start up.~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on Owner's property if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.2.

**§ 10.3.3** ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work on Owner's property and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Construction Manager, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

~~**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

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Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

**§ 10.3.6** ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes, Sections 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

**§ 10.3.7** The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

**§ 10.3.8** The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

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In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C Owner Insurance or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C Owner Insurance and shall be filed with the Owner and Construction Manager prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner and Construction Manager copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§ 11.1.3.1** Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

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Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner, Construction Manager and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~ In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

§ 11.1.5 Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

§ 11.1.6 The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner, Construction Manager and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

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§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

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~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

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**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall ~~deposit the insurance proceeds in a separate account and~~ make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 Bonds**

**§ 11.6.1** Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

**§ 11.6.2** In order to be acceptable as a surety, Contractor's bonding company bust hold a "Certificate of Authority acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

**§ 11.6.3** The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

**§ 11.6.4** The Contractor shall furnish two (2) originals of the Bonds to the Owner, with copies to the Architect and Construction Manager, within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

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The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary ~~thereby, shall be at the Contractor's expense.~~thereby.

...

~~**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.~~

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~~§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.~~

~~§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

§ 12.2.2.1 If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner, Construction Manager or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner, Construction Manager or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

§ 12.2.4 ~~The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.~~ If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Construction Manager, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

§ 12.2.5 ~~Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.~~ The Contractor shall bear the cost of correcting destroyed or damaged construction whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.6 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner, Construction Manager or Architect shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public ~~authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice~~ authority. Timely notice shall be given to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for~~ observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely~~ a minimum of two (2) working days' notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may ~~be present for such procedures. Such~~ observe procedures. The Owner shall bear such costs, except as provided in Section ~~13.4.3, shall be at the Owner's expense.~~ 13.4.3.

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~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ All payments to the Contractor shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.125 ("Prompt Payment Act") and Article 5 of the A132–2019 Agreement on this Project.

**§ 13.6 Non-Discrimination**

**§ 13.6.1** All contracts between the Owner and companies providing goods and services under the Contract Documents shall contain the following equal opportunity and civil right clause:

> "During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The Contractor acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes, Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.6.2** During the completion of the work and all other services required by the Contract Documents, the Contractor agrees that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the

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Civil Rights Act of 1964. Upon request, the Architect, Construction Manager and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Contractor acknowledges that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

**§ 13.7** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner, Construction Manager or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner, Construction Manager or Architect, or by inspections, tests, or approvals required or performed by the Owner, Construction Manager or Architect or anyone else.

**PAGE 40**

**§ 14.1.5 No Right to Stop Work for Non-Payment**

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

**PAGE 41**

**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

...

~~**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

**PAGE 42**

**§ 15.1.1 Definition.** A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms ~~of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out~~ of ~~or relating to~~ the Contract. The responsibility to substantiate Claims shall rest with ~~the party making the Claim.~~ the Contractor. Nothing in this paragraph 15.1.1 is intended to apply to or in any way limit the Owner's right to make Claims related to or arising out of the Contract. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

...

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**§ 15.1.3.1** Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the ~~other party~~ Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party~~ the Contractor under this Section 15.1.3.1 shall be initiated within ~~21~~ ten (10) days after occurrence of the event giving rise to such Claim or within ~~21~~ ten (10) days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to Paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for ~~an~~ any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

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~~**§ 15.1.7 Waiver of Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

...

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~ In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to notify the surety and initiate a Claim on the performance bond.

~~**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation~~

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~~within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

~~§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

§ 15.3.1 ~~Claims, disputes, or other matters in controversy~~ Any claim, dispute or other matter in question or arising out of or related to the ~~Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~Contract shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

§ 15.3.2 The parties shall ~~endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Council shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

~~§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 15.4 Arbitration~~

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

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~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.4 Consolidation or Joinder~~

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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## *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 07:37:46 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A232™ – 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

Jack Doolittle

*(Signed)*

Fire Sprinkler Manager

*(Title)*

2-18-24

*(Dated)*

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# AIA® Document E203® – 2013

## *Building Information Modeling and Digital Data Exhibit*

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
*(Name and location or address of the Project)*

North High School Phase 3 Renovation
1500 James Avenue, Minneapolis, MN 55411

**TABLE OF ARTICLES**


1 GENERAL PROVISIONS

2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

3 DIGITAL DATA PROTOCOLS

4 BUILDING INFORMATION MODELING PROTOCOLS

5 OTHER TERMS AND CONDITIONS


**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

### ARTICLE 1 GENERAL PROVISIONS

**§ 1.1** This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project,.

**§ 1.2.1** The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

**§ 1.3 Adjustments to the Agreement**

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.


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/

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**§ 1.3.2** Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

**§ 1.3.3** Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:
*(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)*

**§ 1.4 Definitions**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

**§ 1.4.2 Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

**§ 1.4.3 Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

**§ 1.4.4 Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

**§ 1.4.5 Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

**§ 1.4.7 Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

**§ 1.4.8 Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

**§ 1.4.9 Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

**§ 1.4.10 Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

**§ 1.4.11 Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

**§ 1.4.12 Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

**ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**

**§ 2.1** The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital


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Data established pursuant to the terms of this Exhibit.

**§ 2.2** If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

**§ 2.2.1** The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

**§ 2.3** By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

**§ 2.4** Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

## ARTICLE 3 DIGITAL DATA PROTOCOLS

**§ 3.1 Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows:
*(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

| **Anticipated Digital Data** | **Applicability to the Project** *(Indicate Applicable or Not Applicable)* | **Location of Detailed Description** *(Section 3.1.1 below or in an attachment to this exhibit and identified below)* |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

**§ 3.1.1** Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

**§ 3.2** As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

**§ 3.2.1** Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)*


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*(Paragraph deleted)*
§ .

**§ 3.2.3** The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

**§ 3.4 Unauthorized Use**

**§ 3.4.1 Prior to Establishment of Digital Data Protocols**

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 3.4.2 Following Establishment of Digital Data Protocols**

Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

**§ 3.5 Digital Data Management**

**§ 3.5.1** Centralized electronic document management system use on the Project shall be:
*(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)*

[ **X** ] The Parties intend to use a centralized electronic document management system on the Project.

[ ] The Parties do not intend to use a centralized electronic document management system on the Project.

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

**§ 3.5.3** Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.
*(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)*

| **Responsible Project Participant** | **Project Milestone** |
|---|---|
| Contractor | Project Construction begins |

## ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

**§ 4.1** If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:


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[ ] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

**§ 4.2 Anticipated Building Information Modeling Scope.** Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

| Project Portion for Modeling | Responsible Project Participant |
|---|---|
| Project design | Architect |

**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

**§ 4.4 Ancillary Modeling Activities.** Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.
*(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)*

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

**§ 4.5 Modeling Protocols.** As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

**§ 4.5.1** The Modeling protocols shall address the following:

.1 Identification of the Model Element Authors;
.2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
.3 Identification of the required LOD of each Model Element at each identified Project milestone;
.4 Identification of the construction classification systems to be used on the Project;
.5 The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
.6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
.7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
.8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
.9 Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

**§ 4.5.2** Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.
*(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)*

None


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*(Paragraph deleted)*
§ .

**§ 4.5.4** The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

**§ 4.6** The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

**§ 4.7 Unauthorized Use**

**§ 4.7.1 Prior to Establishment of Modeling Protocols**

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

**§ 4.7.2 Following Establishment of Modeling Protocols**

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

**§ 4.8 Model Management**

**§ 4.8.1** The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

| Responsible Project Participant | Project Milestone |
|---|---|

**§ 4.8.2 Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

.1 Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
.2 Model file storage location(s)
.3 Processes for transferring and accessing Model files
.4 Naming conventions as defined in the MPS Revit and Drafting Standards document.
.5 Processes for aggregating Model files from varying software platforms
.6 Model access rights
.7 Identification of design coordination and clash detection procedures.
.8 Model security requirements
.9 Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**§ 4.8.3 Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

.1 Collect incoming Models:
  .1 Coordinate submission and exchange of Models
  .2 Create and maintain a log of Models received


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.3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
.4 Maintain a record copy of each Model file received

.2 Aggregate Model files and make them available for Authorized Uses
.3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
.4 Manage Model access rights
.5 Other: *(Identify additional responsibilities.)*

**§ 4.8.4 Model Archives.** The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

**§ 4.8.4.1** Additional Model Archive requirements, if any, are as follows:

**§ 4.8.4.2** The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and AutoCAD

**§ 4.9 Post-Construction Model.** The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.
*(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

| Post-Construction Model | | Applicability to Project *(Applicable or Not Applicable)* | Responsible Project Participant | Location of Detailed Description of Requirements and Services *(Section 4.10 below or in an attachment to this exhibit and identified below)* |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |
| | | | | |

**§ 4.10** Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

## ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.


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# *Additions and Deletions Report for*
## *AIA® Document E203® – 2013*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 07:38:46 CT on 01/31/2024.

**PAGE 1**

This Exhibit dated the 31 day of January in the year 2024 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

North High School Phase 3 Renovation
1500 James Avenue, Minneapolis, MN 55411

...

**§ 1.2** The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the ~~Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.~~ Project,.

...

**§ 1.3.1** If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

**PAGE 2**

**§ 1.4.1 Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~ .

...

**§ 1.4.6 Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~3.

**PAGE 3**

| | | |
|---|---|---|
| Project Agreements and Modifications | Applicable | MPS Central Files |
| Project communications | Applicable | MPS Central Files |
| Architect's pre-construction submittals | Applicable | MPS Central Files |

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| | | |
|---|---|---|
| Contract Documents | Applicable | MPS Central Files |
| Contractor's submittals | Applicable | Contractor/Architect |
| Subcontractor's submittals | Applicable | Contractor/Architect |
| Modifications | Applicable | Architect |
| Project payment documents | Applicable | MPS Central Files |
| Notices and claims | Applicable | MPS Central Files |
| Building Information Modeling | Applicable | Architect |
| All other construction related documents | Applicable | Contractor |

...

MPS Central files are the digital project files kept on the MPS server

**PAGE 4**

~~**§ 3.2.2 The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.**~~

**§ .**

**§ 3.3** The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data ~~protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.~~ protocols.

...

Following agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[ X ] The Parties intend to use a centralized electronic document management system on the Project.

...

**§ 3.5.2** If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013,~~ protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth ~~in the latest version of G201–2013 approved~~ d by the Project Participants.

...

Contractor Project Construction begins

**PAGE 5**

[ X ] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design Architect

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**§ 4.3 Anticipated Model Authorized Uses.** Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project ~~Participants and further described for each LOD in AIA Document G202–2013.~~

Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

...

None

~~**§ 4.5.3** The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.~~

§ .

**PAGE 6**

Following agreement to, and documentation of, the Modeling ~~protocols in AIA Document G202–2013,~~ protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

.1 Model origin point, coordinate system, precision, file formats and ~~units~~units. The model shall be accurately geo-located to agreed-upon reference datum

...

.4 Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

**PAGE 7**

Transmit to MPS the model in PDF, Revit and AutoCAD

...

| | | | | |
|---|---|---|---|---|
| **§ 4.9.1** | Remodeling | Applicable | Owner | |
| **§ 4.9.2** | Wayfinding and Mapping | Applicable | Architect | |
| **§ 4.9.3** | Asset/FF & E Management | Applicable | Owner | |
| **§ 4.9.4** | Energy Management | Applicable | Owner | |
| **§ 4.9.5** | Space Management | Applicable | Owner | |
| **§ 4.9.6** | Maintenance Management | Applicable | Owner | |

...

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As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 07:38:46 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/31/2024

*(Dated)*

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MINNEAPOLIS PUBLIC SCHOOLS

# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 21A Fire Protection

This work scope includes fire protection systems for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $144,000

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $3,400 | Rejected |
| **Alt#2: Toilets D106 & D206** | $3,400 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $8.700 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE

   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

| | | |
|---|---|---|
| i. | General Aggregate | $1,500,000 |
| ii. | Products/Completed Operations Aggregate | $1,500,000 |
| iii. | Per Occurrence | $1,500,000 |

   The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

| | | |
|---|---|---|
| i. | Per Occurrence | $1,000,000 |
| ii. | PIP | Basic |
| iii. | Underinsured Motorist | $1,000,000 |
| iv. | Uninsured Motorist | $1,000,000 |

   c. Workers Compensation

| | | |
|---|---|---|
| i. | Coverage A is statutory. | |
| ii. | Coverage B | $500,000 Each Accident |
| iii. | $500,000 Each Employee | |

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders "all risk" Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

MINNEAPOLIS PUBLIC SCHOOLS

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 21A Fire Protection

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School: September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

## Substantial Completion

The Work will be substantially complete on the dates provided above.

# FY21 North High School Phase 3

## Contract Sum: $3,984,000

## Contractor: Thelen Heating & Roofing, Inc.

## Project Name and Number

North High School Phase 3 Work Scope 23B Combined Mechanical
1500 James Avenue
Minneapolis, MN 55411
Minneapolis Public Schools Project Number 21NORTCTE
OP 24-2405

## Description

Phase 3 of the North High School Renovations. The project includes the auditorium renovation, childcare and kitchen and serving area renovations at North High School.

## Contract Sum details

| Item | Price | Status |
|---|---|---|
| **Base Bid** | $3,984,000 | accepted |
| **Alt #1: Toilets D140 & D240** | $136,000 | rejected |
| **Alt #2: Toilets D106 & D206** | $130,000 | rejected |
| **Alt #3: 2nd Floor Auditorium Classrooms** | $262,000 | rejected |
| **Alt #4: Auditorium Seating** | $0 | Accepted |

## Contract Documents

AIA Document A132-2019
AIA Document A132 Exhibit A-2019
Exhibit B – Project Charter
Exhibit C – Owner Insurance
Exhibit D – Project Schedule
AIA Document E203-2013
AIA Document A232-2019

# AIA® Document A132® – 2019

## *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the 31 day of January in the year 2024 January
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

and the Contractor:
*(Name, legal status, address, and other information)*

Thelen Heating & Roofing, Inc
1717 SE 13th Street
Brainerd MN 56401

for the following Project:
*(Name, location, and detailed description)*

North High School Phase 3 Work Scope 23B Combined Mechanical
1500 James Avenue
Minneapolis, MN 55411

The Construction Manager:
*(Name, legal status, address, and other information)*

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

The Architect:
*(Name, legal status, address, and other information)*

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.


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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.


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[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion of the Project or Portions Thereof**
**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
*(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)*

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**
**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the
*(Paragraphs deleted)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.
**§ 4.2 Stipulated Sum**
**§ 4.2.1** The Contract Sum shall be Three million, nine hundred, eighty-four thousand dollars ($ 3,984,000 ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2.2 Alternates**
**§ 4.2.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Table deleted)*
**§ 4.2.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Paragraphs deleted)*
*(Table deleted)*
**§ 4.2.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.2.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Table deleted)*


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**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Paragraph deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.4** Unit prices, if any, are defined in EXH-B Project Charter.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*
**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

**§ 4.6** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3** When an Application for Payment is received by the Construction Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").
*(Federal, state or local laws may require payment within a certain period of time.)*

### § 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of


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values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.4.3.1** The amount of each progress payment shall first include:

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.4.3.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and

**.5** Retainage withheld pursuant to Section 5.1.7.

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the


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retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:
*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

**§ 5.2 Final Payment**
**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum**
**§ 5.2.1.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; and
**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**
**§ 5.2.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
**.2** the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
**.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

**§ 5.2.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
*(Insert rate of interest agreed upon, if any.)*

Zero %

**ARTICLE 6 DISPUTE RESOLUTION**
**§ 6.1 Initial Decision Maker**
The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document
*(Paragraphs deleted)*
A232–2019.


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§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

[ ] Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1 Where the Contract Sum is a Stipulated Sum**

**§ 7.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

**§ 7.1.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

**§ 7.1.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

*(Paragraphs deleted)*

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:
*(Name, address, email address, and other information)*

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411

**§ 8.3** The Contractor's representative:


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*(Name, address, email address, and other information)*

Nick Haglin
Vice President
Thelen Heating & Roofing, Inc.
1717 SE 13th Street
Brainerd, MN 56401

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Record Keeping—Availability and Retention**
Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**
Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**
Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**
In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**
Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth EXH-C Owner Insurance.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.


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**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

email to Owner's representative identified in Section 8.2

**§ 8.7 Relationship of the Parties**
Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**§ 8.8** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**.2** AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit

**.3** AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2024

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|
| 1 | 11/10/2023 | 110 |


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| | | |
|---|---|---|
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8** Other Exhibits:

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ]
*(Paragraphs deleted)*
*(Table deleted)*

[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

contractors bid documents

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Ibrahima Diop Sr. Officer of Finance and Operations | NICK HAGLIN, VP |
| *(Printed name and title)* | *(Printed name and title)* |

Init.
/

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# *Additions and Deletions Report for*
## *AIA® Document A132® – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:08:36 CT on 01/31/2024.

**PAGE 1**

**AGREEMENT** made as of the 31 day of January in the year 2024 ~~January~~

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Thelen Heating & Roofing, Inc
1717 SE 13th Street
Brainerd MN 56401

...

North High School Phase 3 Work Scope 23B Combined Mechanical
1500 James Avenue
Minneapolis, MN 55411

...

Kraus-Anderson Construction Company
501 South 8th Street
Minneapolis, MN 55405

...

LSE Architects
1401 Glenwood Avenue
Minneapolis, MN 55405

**PAGE 2**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents ("Contract" or "Contract Documents") listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

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**§ 1.2** In the event that there are inconsistencies between any of the Project Contract Documents, all Contract Documents shall be construed together and shall be read with a purpose and intent to provide that the Contractor shall commit to fully complete its Project Work and services with the greater degree of commitment as referenced in the Contract Documents, including the plans and specifications, to work diligently to ensure completion of the Project in a timely and workmanlike manner and at the earliest stated times provided for in Project schedules, as they may be revised, and to ensure that Contractor, and all of its Subcontractors and suppliers complete the Project on schedule and within Project Contract Price, subject to approved change orders.

**§ 1.3** Contractor acknowledges that it has had full, fair, and adequate opportunity to review all of the Project bidding and Contract Documents, that it has fully satisfied itself as to the scope and requirements of the Project, that it has fully and fairly investigated all Project site conditions and circumstances and Contract Documents, including any potential difficulties or interferences present in the same, that it has had the opportunity to ask questions during the bidding phase and that it has received adequate answers to any such questions, that it has had the opportunity to attend and fairly participate in all pre-bid conferences and pre-construction conferences, and that it has required the same of all of its Subcontractors.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following ~~dates:~~dates defined in EXH-D Project Schedule. Such portions of the Work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

~~**Portion of Work** **Substantial Completion Date**~~

~~**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**~~
~~**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:~~
~~*(Check one of the following boxes and complete the necessary information.)*~~

~~[ – ] Not later than ( – ) calendar days from the date of commencement of the Work.~~

~~[ – ] By the following date:~~

~~**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:~~

~~**Portion of Work** **Date to be substantially complete**~~

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the ~~Contract. The Contract Sum shall be one of the following:~~
~~*(Check the appropriate box.)*~~

~~[ – ] Stipulated Sum, in accordance with Section 4.2 below~~

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[ – ] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

[ – ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

*(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)*
Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** The Contract Sum shall be Three million, nine hundred, eighty-four thousand dollars ($ 3,984,000 ), subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.2.1** Alternates, if any, included in the Contract Sum:
Sum are defined in EXH-B Project Charter.

| Item | Price |
|---|---|

**§ 4.2.2.2** Subject to the conditions noted below, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

**§ 4.2.3** Allowances, if any, included in the Contract Sum:Sum are defined in EXH-B Project Charter.

...

**§ 4.2.4** Unit prices, if any:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)any are defined in EXH-B Project Charter.

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

**§ 4.3** Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum PriceAllowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.
**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

**§ 4.3.2** The Contractor's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

**§ 4.3.3** The method of adjustment of the Contractor's Fee for changes in the Work:

**§ 4.3.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

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~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~Unit prices, if any, are defined in EXH-B Project Charter.
~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~
~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ( ) percent ( %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~
~~*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*~~

| ~~Item~~ | ~~Units and Limitations~~ | ~~Price per Unit ($0.00)~~ |
|---|---|---|

~~§ 4.4.7 Guaranteed Maximum Price~~
~~§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed ($ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~§ 4.4.7.2 Alternates~~
~~§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:~~

| ~~Item~~ | ~~Price~~ |
|---|---|

~~§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.~~
~~*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*~~

| ~~Item~~ | ~~Price~~ | ~~Conditions for Acceptance~~ |
|---|---|---|

~~§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:~~
~~*(Identify each allowance.)*~~

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~~Item~~ ~~Price~~

~~§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:~~
~~*(Identify each assumption.)*~~

~~§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.~~

**PAGE 4**

Contractor and Owner recognize that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay Owner One Thousand Dollars ($1,000.00) per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Time specified in the Contract Documents, the Contractor shall pay the Owner One Thousand Dollars ($1,000.00) per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

None

...

**§ 5.1.1** Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and ~~Architect,~~ Architect and approval by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~
month.

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Construction ~~Manager not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified~~ Manager, payment of the amount certified shall be made by the Owner not later than forty-five ( 45 ) days after the Construction Manager receives the Application for Payment. Unless expressly otherwise agreed in this Contract, payments and payment disputes shall be governed by the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act").

...

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**§ 5.1.4.1** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
**PAGE 5**

**§ 5.1.4.3** In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

~~**§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price**~~

~~**§ 5.1.5.1** With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~**§ 5.1.5.2** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ 5.1.5.3** In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~**§ 5.1.5.3.1** The amount of each progress payment shall first include:~~

- ~~**.1** The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~**.2** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~**.3** The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:~~

- ~~**.1** The aggregate of any amounts previously paid by the Owner;~~
- ~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~**.5** The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Retainage withheld pursuant to Section 5.1.7.~~

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**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.5.5** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.5.6** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232–2019.

**§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price**

**§ 5.1.6.1** With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 5.1.6.2** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

**§ 5.1.6.2.1** The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 5.1.6.3** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.1.6.4** In accordance with AIA Document A232–2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

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.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 5.1.6.6** In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 5.1.6.7** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

...

Five Percent (5%)

...

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For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, Construction Manager and Contractor.

...

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been fifty percent (50%) completed as determined by the Architect and is satisfactory to the Owner, then ninety percent (90%) of the retained amount may be released to the Contractor for completed Work (with ten percent (10%) of the total retained by the Owner).

**PAGE 6**

Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and Construction Manager and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statutes, Section 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~

**.2** a final Certificate for Payment or Project Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

**.3** all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.1.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ forty-five (45) days after the issuance of the Architect's final Certificate for Payment or Project Certificate for Payment, or as follows:

...

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated ~~below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~below.

...

Zero %

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document ~~A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A232–2019.

§ 6.1.1 Mediation

The Owner or the Contractor may request mediation of any Claim submitted to the Initial Decision Maker before the decision becomes final and binding. The mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in

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writing by the party requesting mediation and the other party of this contract. The Owner and Contractor shall participate in mediation in good faith. The mediation shall be concluded within 60 days of the request. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the Owner and Contractor agree to mediate before any dispositive motion or trial.

**PAGE 7**

[ ] ~~Litigation in a court of competent jurisdiction.~~ [X] Litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota.

...

Termination fee will be based on the percentage of Work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days' notice of the termination.

...

~~**§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price**~~

~~**§ 7.2.1 Termination**~~

~~**§ 7.2.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2 Termination by the Owner for Cause**~~

~~**§ 7.2.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~**.1** Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~**.2** Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.~~

~~**§ 7.2.1.2.2** When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~**§ 7.2.1.2.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~**§ 7.2.1.3 Termination by the Owner for Convenience**~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

~~*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

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~~§ 7.3 Suspension~~

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.~~

...

Curtis Hartog, PE, Executive Director
Minneapolis Public Schools, SSD#1
Capital Planning, Construction & Maintenance
1250 West Broadway Avenue, Minneapolis, MN 55411
**PAGE 8**

Nick Haglin
Vice President
Thelen Heating & Roofing, Inc.
1717 SE 13th Street
Brainerd, MN 56401

...

**§ 8.5 Record Keeping—Availability and Retention**

Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, Contractor agrees that the books, records, documents and accounting procedures and practices of Contractor, that are relevant to the Contract or transaction, are subject to examination by the Owner, the Owner's auditor, and the state auditor for a minimum of six (6) years. Contractor shall maintain such records for a minimum of six (6) years after final payment.

**§ 8.6 Data Practices**

Pursuant to Minnesota Statutes, Section 13.05, subd. 11, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing this contract is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13, and Contractor must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08 apply to Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this contract.

**§ 8.7 Non-Discrimination**

Pursuant to Minnesota Statutes, Section 181.59, the Contractor will take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age. The Contractor agrees to be bound by the provisions of Minnesota Statutes, Section 181.59, that prohibits certain discriminatory practices and the terms of said section are incorporated into this contract.

**§ 8.8 Prompt Payment to Subcontractors**

In accordance with the Prompt Payment Act, each Prime Contractor must pay any subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Subcontract must require the Prime Contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the Prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

**§ 8.9 Prevailing Wage**

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Contractor agrees that all laborers or mechanics working on the Project shall receive at least the prevailing wage rate in accordance with Minnesota Statutes Section 177.42, *et seq*. Contractor agrees further that it will incorporate any and all necessary contract language in its agreements with any subcontractors to allow Contractor to monitor and enforce the prevailing wage requirement for subcontractors of any tier.

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth ~~in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~EXH-C Owner Insurance.

**PAGE 9**

email to Owner's representative identified in Section 8.2

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-Subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2024

...

| | | |
|---|---|---|
| 165 | North Renovations Vol. 1 of 2 | October 30, 2023 |
| 156 | North Renovations Vol. 2 of 2 | October 30, 2023 |

...

| | | | |
|---|---|---|---|
| All specifications | North Renovations Bid Package 3 | October 30, 2023 | 1565 |

...

| | | |
|---|---|---|
| 1 | 11/10/2023 | 110 |
| 2 | 11/21/2023 | 222 |
| 3 | 11/30/2023 | 140 |

**PAGE 10**

EXH-B Project Charter
EXH-C Owner Insurance
EXH-D Project Schedule

[ ] ~~AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work~~

~~[ – ] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:~~
~~*(Insert the date of the E235-2019 incorporated into this Agreement.)*~~

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~~[ – ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

...

contractors bid documents

...

Ibrahima Diop  Sr. Officer of Finance and Operations

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:08:36 CT on 01/31/2024 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

Curtis Hartog, Executive Director

*(Title)*

1/31/2024

*(Dated)*

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# AIA® Document A132® – 2019 Exhibit A

## *Insurance and Bonds*

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the __31st____ day of ___January_____ in the year __2024____
*(In words, indicate day, month, and year.)*

for the following **PROJECT**:
*(Name and location or address)*

North High School Phase 3 Work Scope 23B Combined Mechanical
1500 James Avenue, Minneapolis, MN 55411

**THE OWNER:**
*(Name, legal status, and address)*

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

**THE CONTRACTOR:**
*(Name, legal status, and address)*

Thelen Heating & Roofing, Inc 1717 SE 13th Street
Brainerd, MN 56401

**TABLE OF ARTICLES**


**A.1 GENERAL**

**A.2 OWNER'S INSURANCE**

**A.3 CONTRACTOR'S INSURANCE AND BONDS**

**A.4 SPECIAL TERMS AND CONDITIONS**


**ARTICLE A.1 GENERAL**

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

**ARTICLE A.2 OWNER'S INSURANCE**

**§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ A.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions



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**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|---|---|

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to false work and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's, Construction Manager's, and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|---|---|

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.


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**§ A.2.4 Optional Extended Property Insurance.**
The Owner shall purchase and maintain the insurance selected and described below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**
The Owner shall purchase and maintain the insurance selected below.
*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*


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**User Notes:** (2054435395)

[ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ A.2.5.2 Other Insurance**
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

| Coverage | Limits |
|---|---|

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined in EXH-C Owner Insurance providing coverage for claims including

**.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
**.2** personal injury and advertising injury;
**.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
**.4** bodily injury or property damage arising out of completed operations; and


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.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*


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If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the types and limits of insurance as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
*(Specify type and penal sum of bonds.)*

| Type | Penal Sum ($0.00) |
|---|---|
| Payment Bond | $3,984,000 |
| Performance Bond | $3,984,000 |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None


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# *Additions and Deletions Report for*

## *AIA® Document A132® – 2019 Exhibit A*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:09:28 CT on 01/31/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 31st day of January in the year 2024

...

North High School Phase 3 Work Scope 23B Combined Mechanical
1500 James Avenue, Minneapolis, MN 55411

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Thelen Heating & Roofing, Inc 1717 SE 13th Street
Brainerd, MN 56401

**PAGE 2**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance ~~written on a builder's risk "all-risks" completed value or equivalent~~ policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**PAGE 4**

**§ A.3.2.1** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance as defined in EXH-C Owner Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

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**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits ~~of not less than ($ ) each occurrence, ($ ) general aggregate, and ($ ) aggregate for products-completed operations hazard,~~ as defined in EXH-C Owner Insurance providing coverage for claims including

**PAGE 5**

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits ~~of not less than ($ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.~~as defined in EXH-C Owner Insurance.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance.

**§ A.3.2.5** Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

**§ A.3.2.6** Employers' Liability ~~with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance.

**§ A.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance.

**§ A.3.2.8** ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

~~**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

**PAGE 6**

If Professional Liability insurance is required as part of the Contract, the Contractor shall maintain coverage for one year beyond the date of Substantial Completion.

**§ A.3.3.2** The Contractor shall purchase and maintain the ~~following~~ types and limits of insurance ~~in accordance with Section A.3.3.1.~~as defined in EXH-C Owner Insurance.

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*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[ – ] **§ A.3.3.2.1** If there is only one Contractor performing the Work on the Project, property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

[ – ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ – ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ( $ ) per claim and ( $ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ – ] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ – ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ – ] **§ A.3.3.2.6 Other Insurance**
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

| **Coverage** | **Limits** |
|---|---|

**§ A.3.4 Performance Bond and Payment Bond**

...

| | |
|---|---|
| Payment Bond | $3,984,000 |
| Performance Bond | $3,984,000 |

...

None

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# Exhibit B – Project Charter

## FY21 North High School Phase 3 21NORTCTE

## Work Scope 23B Combined Mechanical

This work scope includes heating, ventilation, plumbing and mechanical systems for the Phase 3 renovations at North High School. Phase 3 is focused on the auditorium childcare area and the kitchen and serving area at North High School.

## Contract Sum

The Contract Sum shall be $3,984,000

### Alternates

| Item | Price | Status |
|---|---|---|
| **Alt#1: Toilets D140 & D240** | $136,000 | Rejected |
| **Alt#2: Toilets D106 & D206** | $130,000 | Rejected |
| **Alt#3: 2nd Floor Auditorium Classrooms** | $262,000 | Rejected |
| **Alt#4: Auditorium Seating** | $0 | Accepted |

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:
   The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Worker's Compensation and Employer's Liability Insurance

      i. Coverage A is statutory.

      ii. Coverage B
      $500,000 Each Accident
      $500,000 Each Employee
      $500,000 Policy Limit (Disease)

   b. Comprehensive General Liability Insurance *

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products/Completed Operations Aggregate | $1,000,000 |
| Per Occurrence | $1,000,000 |
| Medical Payments | $10,000 |

   * The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

   c. Automobile Insurance

| | |
|---|---|
| Per Occurrence | $1,000,000 |
| PIP | Basic |
| Underinsured Motorist | $1,000,000 |
| Uninsured Motorist | $1,000,000 |

   d. Professional Liability Insurance

      i. Per Claim $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $4,000,000

e. Umbrella Liability Insurance

i. Per Occurrence $2,000,000

ii. For projects with an estimated construction Contract Sum of over $10,000,000 or major structural work an aggregate is required as follows:
Aggregate $2,000,000

f. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim $1,000,000

ii. Aggregate $1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are $1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT'S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner's lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner's lender(s) do procure or maintain such insurance, the Owner or the Owner's lender(s) shall have, in additional to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

3. PROFESSIONAL LIABILITY INSURANCE

   a. Professional Liability Coverage of $2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below $2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."

   b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.

   c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

4. COVERAGE
   The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

5. GENERALLY

   a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017
   The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

   a. Commercial General Liability

      i. General Aggregate $1,500,000

      ii. Products/Completed Operations Aggregate $1,500,000

      iii. Per Occurrence $1,500,000

      The Owner shall be named as additional insured for Commercial General Liability Insurance

   b. Automobile Insurance

      i. Per Occurrence $1,000,000

      ii. PIP Basic

      iii. Underinsured Motorist $1,000,000

      iv. Uninsured Motorist $1,000,000

   c. Workers Compensation

      i. Coverage A is statutory.

      ii. Coverage B $500,000 Each Accident

      iii. $500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

   i. Per Claim $2,000,000

   For Projects with an estimated construction cost of over $10,000,000 or major structural work, additional Aggregate coverage of $4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

f. Property Insurance

   i. Per Claim $1,000,000

   ii. Aggregate $1,000,000

   This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders “all risk” Insurance

   i. Per Claim $2,000,000

   ii. Aggregate $4,000,000

   This insurance is only required for additions exceeding $10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

   i. Aggregate limit $5,000,000

   This insurance is required only for projects larger than $10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## FY21 North High School Phase 3. Work Scope 23B
## Combined Mechanical

MPS Project Number: 21NORTCTE
Project Name: North High School Phase 3 Renovations
School: North High School
Address: 1500 James Avenue, Minneapolis, MN 55411
OP#: 24-2405

## Description

Phase 3 renovations include auditorium, childcare and kitchen renovation at North High School.

## Schedule

The overall schedule for the project is

Last Day of School: June 14, 2024
Last Day for Staff: June 17, 2024
Juneteenth Holiday: June 19, 2024 (All MPS Buildings Closed)
Construction Commences: April 1, 2024
Childcare Area: Start April 1, 2024. Substantial Completion: August 16, 2024
Auditorium: Start June 17, 2024. Substantial Completion: November 30, 2024
Kitchen and Serving area: Start June 17, 2024. Substantial Completion: August 16, 2024
First day of School:  September 3, 2024
Close-out Documents no later than 45 days past date of Substantial Completion

### Substantial Completion

The Work will be substantially complete on the dates provided above.

MINNEAPOLIS PUBLIC SCHOOLS
Urban Education. Global Citizens.

# CONTRACT FOR GOODS – above $50,000

This Contract is entered into between Special School District No. 1, "District", a special school district created and existing under the laws of Minnesota, and Apple Auto "Contractor" (collectively "parties") to provide five (5) 2024 Ford F-350 4x4 trucks at Plant Maintenance Department

## 1 *TERM OF CONTRACT*

1.1 This Contract is effective on February 1, 2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until June 30, 2025, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District's Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor's OWN RISK and as a volunteer.

## 2 SCOPE OF WORK

2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** ("Scope of Work"). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

## 3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

### 3.1 *Total Obligation*

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed $240,714.20. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

### 3.2 *Frequency of Invoicing and Terms of Payment*

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

### 3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages

that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 ***Fund Availability; Federal Funds Contingency.***

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

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## 5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

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6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

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9.1 Contractor 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 District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

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10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

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## 13 INSURANCE

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certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above $1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract, and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

## 14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

## 15 LIMITATION ON LIABILTY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

## 16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining

this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

## 17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

## 18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contactor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

## 19 RETURN OF DATA

19.1 Within ten (10) days of the completion, termination of this Contract, or upon request of the District, whichever occurs first; Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Or, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

19.2 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

## 20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

## 21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

**Special School District No. 1**
Division: Operations
Attn: Grant Lindberg, Director of Plant Maintenance
1250 W Broadway
Minneapolis, MN 55411

Email: grant.lindberg.mpls.k12.mn.us

**CONTRACTOR**

NAME: Apple Auto Commercial Sales
Address: 7200 Lakeville Blvd, Lakeville, MN 55044
Phone: 952-431-5900
Email: smiller@appleautos.com

**ACKNOWLEDGMENT**

21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

## 22 NON-WAIVER

22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

## 23 ASSIGNMENT

23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably

believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

## 24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

## 25 WARRANTY

25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

## 26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

## 27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name: Ibrahima Diop
(Printed)

Title: Sr. Officer for Finance and Operations

Date: _____

**CONTRACTOR NAME**

Signature:

Name: Scott Miller
(Printed)

Title: Apple Autos

Date: 2/1/24

**EXHIBIT A: SCOPE OF WORK**

***Deliverables:***

Five (5) 2024 Ford F-350 4x4 pickup trucks per the December 18, 2023 quote (878800) in response to RFB 24-01

***Service Outcome:***

Five 2024 Ford F-350 4x4 pickup trucks

***Method of Evaluation***

Delivery and inspection

[The remainder of this page intentionally left blank.]

**EXHIBIT B: PAYMENT TERMS**

If there are exhibits to describe the payment terms:

Click or tap here to enter text.

MINNEAPOLIS PUBLIC SCHOOLS
Urban Education. Global Citizens.

# CONTRACT FOR SERVICES – $25,000 above

This Contract is entered into between Special School District No. 1, "District", a special school district created and existing under the laws of Minnesota, and WARSHAW GROUP, INC. dba INTELLIS "Contractor" (collectively "parties") to provide Capital Investment Planning software system to Minneapolis Public Schools

## TERM OF CONTRACT

1.1 This Contract is effective on March 1st, 2024, or the date of the last signature of the parties, whichever is later, and shall remain in effect until March 1st, 2025, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District's Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor's OWN RISK and as a volunteer.

## 2 SCOPE OF WORK

2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** ("Scope of Work"). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

## 3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 ***Total Obligation***

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed $346,100.00. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 ***Frequency of Invoicing and Terms of Payment***

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services monthly. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

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to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

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13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above $1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than $1,500,000 each claim and $1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

## 14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

## 15 LIMITATION ON LIABILTY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

## 16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

## 17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically

set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

## 18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contactor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

## 19 RETURN OF DATA

19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

## 20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

## 21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

**Special School District No. 1**

Division: Operations Division
Attn: Curtis Hartog, P.E., Executive Director, CPCM
1250 W Broadway
Minneapolis, MN 55411
Email: curtis.hartog@mpls.k12.mn.us

**CONTRACTOR**

WARSHAW GROUP, INC. d/b/a INTELLIS LABS,
Phone: 801-448-3435
Address: 600 5th Avenue, 2nd Floor, New York, NY 10020
Email: stevew@intellis.io

**ACKNOWLEDGMENT**

21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

## 22 NON-WAIVER

22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

## 23 ASSIGNMENT

23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

## 24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

## 25 WARRANTY

25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

## 26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

## 27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

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**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name: Ibrahima Diop

(Printed)

Title: Senior Financial Officer

Date: _____

**CONTRACTOR NAME**

Signature:

Name: Steven Warshaw
(Printed)

Title: President

Date: 2/28/2024

**Exhibit A:**

**Deliverables:**

To provide MPS with a Capital Investment Planning system as provided in the Intellis response to RFP 23-19 Capital Investment Planning system. Key Milestone deliverables are as follows: Milestone 1: Project Kick Off, Milestone 2: Pre-planning & condition assessment. Milestone 3: Data Migration, Mile Stone 4: Installation and Implementation, , Milestone 5: Training, Milestone 6: Go-Live. We will work to a mutually agreed upon project schedule based on key items such as data and staff availability. Details of each milestone are available in Exibit A.

**Service Outcome:**

To provide a complete and functional Capital Investment Planning software for Capital Planning, Construction and Maintenance Department at Minneapolis Public Schools.

**Method of Evaluation:**

Functional capital investment planning system to input, review and evaluate capital investment planning needs of MPS for all school district building and assets with a mutually agreed upon testing acceptance document signoff. Specific evaluation criteria will be developed during the implementation and used to agree to milestone completion and sign-off.

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**EXHIBIT B: PAYMENT TERMS**

If there are exhibits to describe the payment terms:

See Exhibit B-1 for payment terms.

[The remainder of this page intentionally left blank.]

# ADDENDUM TO CONTRACT FOR SERVICES - $25,000 above

This Addendum to Contract for Services - $25,000 above ("Addendum") supplements the attached Contract for Services - $25,000 above, dated December __, 2023 ("Agreement"), between the District and Contractor (both as defined in the Agreement, and collectively referred to as the "**Parties**").

Unless otherwise specified, capitalized terms in this Addendum have the same meaning as defined in the Agreement and those definitions are incorporated by reference.

1. Section 2 of the Agreement is modified by adding Exhibit A attached hereto.

   Section 2.1 is hereby modified by replacing Exhibit A of the Agreement with the Exhibit A-1 attached to the Addendum.

2. Section 2 of the Agreement is modified by adding Section 2.2 related to the Services provided under the Agreement.

   2.2 ***Services; Deliverables***. Contractor provides District a limited non-exclusive, non-transferable, non-sublicensable right to access and use the proprietary software as a service, Foundation Platform, as may be updated and upgraded from time to time and any application programming interface provided by Contractor to District (collectively, the "Services"). To use the Services, District must register for an account (the "Account"). District is solely responsible for maintaining the security of the credentials ("Credentials") for accessing and using the Account and for the activity occurring under the Account, authorized or unauthorized. In the event of a breach of the Account or Credentials, District agrees to notify Contractor immediately of any unauthorized use and to comply with Contractor's reasonable instructions. Contractor will not be liable for any loss or damage arising from District's refusal or failure to comply with this Section. District's Account supports multiple users identified by the District ("Users"). Each User may download, access and use the Services on a mobile device. Contractor is not responsible for providing the mobile devices used by Users to access or use the Services. Each User must be assigned a separate User profile under the Account. Sharing of User profiles is not permitted. District shall ensure Users are in compliance with the terms of this Contract and shall be fully responsible and liable for the conduct of Users. Contractor may provide certain professional and consulting services, including without limitation the provision of certain data integration or migration services (the "Deliverables") to District from time to time, which shall be agreed to and set forth in a separate Statement of Work

3. Section 3.1 is hereby modified by replacing Exhibit B of the Agreement with the Exhibit B-1 attached to the Addendum.

4. Section 8.1 of the Agreement is deleted in its entirety and replaced with the following:

   8.1 Except as provided in the Contract between District and Contractor, the Services and Deliverables are protected by copyright, trademark and other intellectual property laws.

Contractor owns all right, title, and interest in and to the copyright, trademarks and other intellectual property rights (collectively, "Intellectual Property Rights") in and to the Deliverables, Services and Documentation, including without limitation all associated source code, executable code, design elements, media, visual interface, printed materials and related documentation and all modifications, updates, upgrades, improvements and derivatives of the foregoing. Except as expressly licensed to District herein, Contractor reserves all right, title and interest in the Deliverables, Services and all associated Intellectual Property Rights inherent therein, as well as any improvements thereto. District hereby disclaims and hereby assigns to Contractor any ownership interest in any feedback District may provide in or to the Deliverables, Services, as well as any improvements to the Services resulting therefrom. Contractor may incorporate District feedback and suggestions ("District Feedback") into the Software and/or Services without any further financial or other obligation to District. To the extent District Feedback is incorporated into the Software and/or Services, District hereby does and will assign to Contractor all right, title and interest, if any, which District may have in and to the District Feedback. District hereby waives and agrees not to assert any rights over the Software and/or the Services.

8.2 "Subject Data" means data entered, submitted, uploaded or otherwise transmitted into the Services by District or a User. The data, reports, cost estimates, analysis, assessments, project plans and schedules produced by the Software ("Output") is reliant on the Subject Data entered by District or its Users. Contractor is not responsible for and specifically disclaims all liability for any inaccuracies in the Output resulting from Subject Data or any third-party information or data used in the generation of the Output. By entering, submitting, uploading or otherwise transmitting Subject Data to the Services, District acknowledges, agrees, represents and warrants that (i) the Subject Data has been collected in compliance with all applicable laws, regulations, and policies; (ii) the Subject Data does not contain any confidential or proprietary information that District does not have authority to submit; (iii) District has the right to submit such Subject Data for storage and use or have received all necessary consents and approvals to collect, share and use the Subject Data for the purposes set forth in this Contract; (iv) District shall use the Subject Data in compliance with all applicable laws, regulations, and policies; (v) District's use of the Subject Data does not infringe or violate the rights of any third-party; and (vi) District is not entitled to any kind of compensation or reimbursement of any kind from Contractor for the Subject Data. District grants Contractor the right to delete, remove or disable any Subject Data that Contractor determines does not comply with this Contract or is in violation of applicable laws and/or regulations. Unless otherwise agreed, and subject to any applicable third-party personal or proprietary rights in or to the Subject Data, District will continue to own all Subject Data entered, submitted, or uploaded to the Services. District hereby grants to Contractor a royalty-free, worldwide, non-terminable, assignable, right and license to use, copy, and make derivative works of Subject Data for the sole purpose of operating and improving the Services, including without limitation using the Subject Data in aggregated form after it has been anonymized to perform benchmarking and analytics on the Services. District hereby consents to the processing and storage of Subject Data and hereby acknowledges and agrees that as

between District and Contractor, Contractor is a data processor, as that term is generally defined.

5. Section 9 of the Agreement is deleted in its entirety and replaced with the following:

District authorizes Contractor to use the name of District, but only in connection with general sales promotion work and advertising of the Services.

6. Section 14 of the Agreement is modified by adding Section 14.2 below.

14.2 District shall defend, indemnify and hold Contractor (and its officers, directors, agents, subsidiaries, joint ventures, employees and third-party service providers) harmless from and against any claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown including reasonable attorneys' fees, arising from or in connection with (i) any third-party claims arising from or in connection with District's use of the Services or Deliverables other than as permissible under the terms of this Contract and/or the Documentation; (ii) failure to comply with the restrictions set forth in this Contract; (iii) District's violation of any applicable laws or regulations, or (iv) District's violation of the rights of a third-party

7. Section 15 of the Agreement is modified by adding Section 15.2 below.

15.2 Notwithstanding anything to the contrary in this Agreement, in no event whatsoever shall Contractor be liable for any indirect, special, incidental, punitive, or consequential damages, including loss of profits, the cost of replacement of any Subject Data stored or managed using the Services, the use or inability to use the Services, Deliverables or any party thereof, the provision of professional services, unauthorized access to or alteration of District's account, business interruption losses or lost time or good will, even if Contractor has been advised of the possibility of such damages, whether in contract, tort, strict liability or otherwise. Contractor shall not be liable for any claims against District by third parties. In no event shall the maximum, cumulative liability of Contractor in connection with the Services Deliverables, professional services, or any party thereof and/or this Agreement, regardless of the form of action, whether in contract, tort, strict liability or otherwise, exceed the amount paid or payable by District to Contractor in the twelve (12) months preceding the accrual of the alleged claim.

8. Section 18 of the Agreement is modified as follows:

A. The first sentence of Section 18.1 shall be deleted and replaced with the following:

18.1 The District may terminate this Contract at any time with cause, after providing Contractor with written notice and an opportunity to cure any breach of this Contract, upon thirty (30) days written notice to the other Party.

B. Section 18.1 shall be modified by adding the following to the end of Section 18.1:

The Contractor may terminate this Contract at any time without cause upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

9. Section 19 of the Agreement shall be modified by deleting the first sentence of Section 19.1 and replacing it with the following:

Except as otherwise provided in this Contract, within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract.

10. Section 25 of the Agreement shall be deleted in its entirety and replaced with the following:

Contractor does not warrant that the Services or Deliverables will meet District's requirements. The Services, Deliverables and all components thereof are provided "AS IS" without warranty of any kind, whatsoever, either expressed, implied or statutory, including without limitation any implied warranties of merchantability or fitness for a particular purpose, any warranty of non-infringement, accuracy, omissions, completeness, suitability, correctness and delays. Contractor does not represent or warrant that the Services, Deliverables or any components thereof are complete or free from error, and does not assume, and expressly disclaims, any liability to any person for loss or damage caused by errors and omissions in the Services, Deliverables or any components thereof, or malfunctions of the Services, Deliverables or any components thereof, whether such errors or omissions or malfunctions result from negligence, accident or other cause.

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IN WITNESS WHEREOF, the Parties have executed this Addendum as of the date set forth above.

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name: Click or tap here to enter text.

(Printed)

Title: Click or tap here to enter text.

Date: _____

**CONTRACTOR NAME**

Signature:

Name: Steven Warshaw
(Printed)

Title: President

Date: 2/28/2024

**ADDENDUM TO CONTRACT FOR SERVICES - $25,000 above**
**EXHIBIT A-1**

**STATEMENT OF WORK No. 1**
**Minneapolis Public Schools**

## The Foundation Platform

Intellis will implement the Foundation software Platform and related services to provide the MPS Facilities Organization with a way of administering and managing the process of executing and tracking **Condition Assessment** of their facilities and **Planning** their related actions.

MPS has an annual cycle where the plan is updated. The approval of those updates is in the beginning of June with activities leading up to that date that likely include:

Data gathering, analysis, policy setting and creating reports culminating in an approved plan and constrained by the following milestones:

1. a presentation and review with the financial department in the beginning of April
2. a plan reading in beginning of May.

The annual contract with Intellis will start (and have anniversaries) at the January or February.

### The next Plan approval – June 2024 (the 2024 Plan)

Since the preparation of the 2024 plan (which will be presented to Finance in the beginning of April 2024) will be well underway at the time the Foundation implementation will begin, preparing the 2024 plan for MPS will use pre-existing methods and data (available prior to starting the implementation for the Foundation Platform). For the most part the Foundation implementation team will work in parallel to the 2024 plan preparation effort, observing and gathering information about the process for the purpose of incorporating those lessons into the Foundation Platform so it can be used in the preparation of the 2025 capital plan (which will be presented to Finance in the beginning of April 2025).

### Plan Approval June 2025 (the 2025 Plan)

#### *Begin Condition Assessment*

The Foundation Implementation team will establish and configure the Foundation platform to support an ongoing Facility Condition Assessment effort. MPS will be responsible for performing the Assessment effort using staff from MPS or contracting with appropriate experts (e.g., Architecture, Engineering firms).

It is assumed that Condition Assessment information generated using the Foundation platform will not be available for the preparation of the 2024 plan.

*Incorporate condition assessment data*

Data available from the condition assessment gathered using the Foundation Platform will be utilized to the extent feasible based on schedule, in the preparation for the 2025 plan.

*Incorporate Lessons learned from 2024 plan preparation.*

The Foundation platform will be configured to support preparation of the 2025 based in part on lessons learned from observing the preparation of the 2024 plan.

*Reconcile 2025 Plan*

To the extent needed, a comparison between the 2024 plan and the 2025 plan will be a one-time effort due to the 2024 plan and the 2025 plans being different in nature and format. (the 2025 plan will be the first prepared in the Foundation platform). Moving forward, year-to-year comparisons would be generated as reports from the Foundation platform.

## Activities

The Activities and Implementation of the Foundation Platform is separated into two main portions. Those related to the **Condition Assessment** and those related to **Planning** (creating the Plan). The following describes the activities related to each portion:

## Planning

### Pre-Planning

*Setup methodology and costing*

Intellis will review existing codes and categories, and establish the equivalent in Foundation (e.g., budget codes, project types, phase types, cost distribution rules).

*Management setup*

Intellis will set up User and Role administration for MPS users to access the Foundation portal.

*Software as a Service*

The Foundation software will be available.

*Existing plans and Pipeline*

Intellis will review current MPS plans and current project pipelines to inform the process of creating policies in the Foundation Platform, for use by future MPS plans.

### Planning

*Establish Policies*

Intellis will help establish the grouping, costing, scheduling, and priority policy types. A “project creation policy” enables users to create projects by executing the designated policy.

*Planning activities*

Intellis and MPS will review the result of the established policies. The review may require policy adjustments and overrides to achieve a recommended plan. This might involve multiple iterations and review with stakeholders.

#### *Reconciliation*

N/A for the 2024 plan. A comparison between the 2024 plan (created without Foundation) and the 2025 plan which is generated using Foundation.

### Reporting and Analysis

#### *Analysis and recommendation*

N/A for the 2024 plan. For the 2025 plan Intellis will support with analysis for findings and insights.

#### *Create and support Reports*

Intellis will configure MPS reports for reporting milestones (e.g., board meeting). This will begin around the preparation for the 2024 plan (even though those reports will not be used until the following year). This effort will continue culminating in a series of reports that will be used to support the 2025 plan.

#### *Management*

Intellis will facilitate meetings, collaborations, and managing the project schedule in conjunction with MPS and their resources.

### Integrations

Information from Integrations will likely be needed in preparation of the 2025 plan. Activities to prepare for those integration will likely begin during the preparation of the 2025 plan. Potential integrations include Finance, Project management (PM), Maintenance management (CMMS). The assumption is that for the 2025 plan only financial integration will be needed.

## Condition Assessment

### Pre-inspection

#### *Setup methodology and costing*

Intellis will provide necessary refinement to methodology and costing. The Foundation Platform will be delivered configured with an initial "methodology"

#### *Management setup (including inspector training)*

Intellis will provide the necessary support required to set up users for performing inspections and accessing information in the Foundation portal. Intellis will facilitate training users on the inspection software and condition assessment process.

#### *Software as a Service*

The Foundation software will be available.

### Inspection

MPS will be responsible for the work and deliverables that comprise this phase with support from Intellis.

#### *Update unit costs*

MPS will be responsible for updating unit costs with support from Intellis using the Foundation software.

#### *Inspection Labor*

MPS will be responsible for managing inspection and inspection support and management labor.

Intellis will provide support through the Intellis support desk facility.

## Reporting and Analysis

### *Analysis and recommendation*

N/A for the 2024 plan. For the 2025 plan Intellis will support with analysis for findings and insights.

### *Create and support Reports*

Intellis will configure MPS reports for reporting milestones (e.g., board meeting). This will begin around the preparation for the 2024 plan (even though those reports will not be used until the following year). This effort will continue culminating in a series of reports that will be used to support the 2025 plan.

### *Management*

Intellis will facilitate meetings, collaborations, and managing the project schedule in conjunction with MPS and their resources.

## Other

### *Thermography Integration*

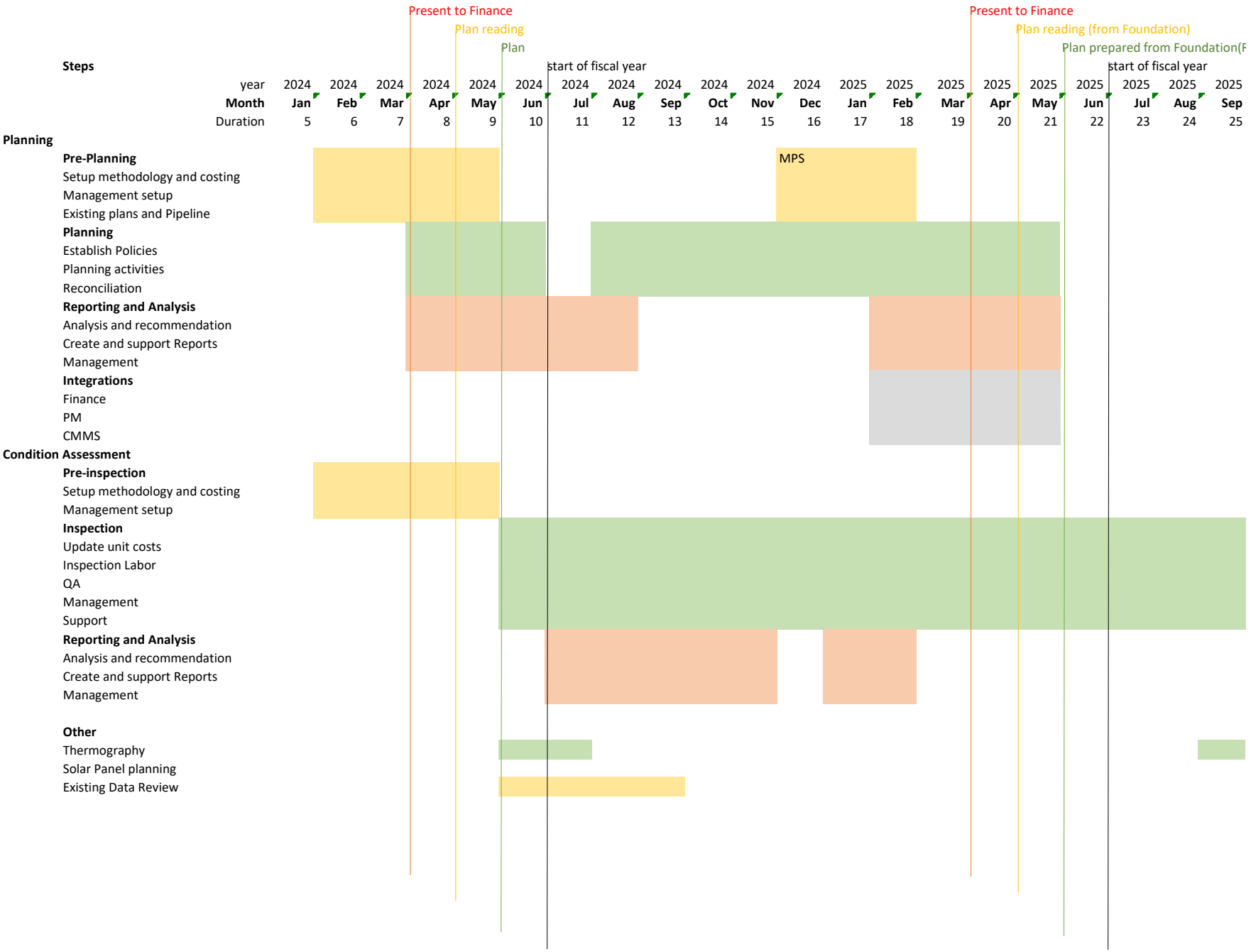
Intellis will provide the necessary support required to integrate the Thermography of Roofs results performed by a 3rd party. The results include but are not limited to high-resolution Photometry and Thermography registered to geography. Photometry will be analyzed to indicate areas of issue on the roof and likely cause for moisture related issues. Issues will be integrated into the Conditions and Needs modules where they can be assigned unit costs and included in reporting. Intellis will provide a file format for MPS (or the 3rd party Thermography Provider) to provide the line item deficiencies (including, component affected, location, size, deficiency, action, quantity, and unit of Measure, Priority and urgency. This effort is limited to incorporating Thermography acquired in 2023.

### *Solar Panel planning*

N/A

### *Existing Data Review and loading*

Analyze and load information condition information from 2017/2018 Condition Assessment. Reconcile existing with Foundation methodology.


Present to Finance
Plan reading
Plan
start of fiscal year
Present to Finance
Plan reading (from Foundation)
Plan prepared from Foundation(F
start of fiscal year
Steps
year 2024 2024 2024 2024 2024 2024 2024 2024 2024 2024 2024 2024 2025 2025 2025 2025 2025 2025 2025 2025 2025
Month Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep
Duration 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Planning
Pre-Planning
Setup methodology and costing
Management setup
Existing plans and Pipeline
Planning
Establish Policies
Planning activities
Reconciliation
Reporting and Analysis
Analysis and recommendation
Create and support Reports
Management
Integrations
Finance
PM
CMMS
Condition Assessment
Pre-inspection
Setup methodology and costing
Management setup
Inspection
Update unit costs
Inspection Labor
QA
Management
Support
Reporting and Analysis
Analysis and recommendation
Create and support Reports
Management
Other
Thermography
Solar Panel planning
Existing Data Review
MPS

**ADDENDUM TO CONTRACT FOR SERVICES - $25,000 above**
**EXHIBIT B-1**

Fees; Subscription and Services. Outlined below are the provisions for invoicing and payment of Subscription Fees, Professional Fees and a reconciliation of the Subscription Fees and Professional Fees.

a. *Subscription Fees*. Fees for the District's use of and access to the Services shall be determined based on the square footage (the "**Subscription Fees**"). Subscription Fees are due in advance on a monthly basis in twelve equal payments. The Subscription Fees shall be increased each subsequent year with increases based upon cost of living adjustments.

b. *Reconciliation*. At the end of each twelve (12) month period of the Initial Term and at the end of each Renewal Term, Contractor may audit the square footage and reconcile the amount of Subscription Fees owed for the square footage in the applicable Initial Term or Renewal Term. Any underpayment by Client shall be due and payable immediately. Any overpayment shall be applied to Subscription Fees due in the upcoming Renewal Term.

c. *Professional Services Fees.* Client shall be invoiced for fees for the provision of Professional Services (as defined below) (the "**Professional Fees**") in accordance with the terms of the applicable SOW (as defined below). Professional Fees are due in advance on a monthly basis in twelve (12) equal payments. If the scope of Professional Services is substantially different than provided in this Exhibit B-1, then the District and Contractor shall negotiate in good faith for an increase and reconciliation based upon the Professional Fees incurred.

d. *Payment Terms*. All Subscription Fees and Professional Fees shall be paid in U.S. dollars. Client is responsible for the payment of all applicable sales tax. Client acknowledges and agrees that, all Subscription Fees and Professional Fees are non-refundable. If District fails to pay an invoice, Contractor may charge and District agrees to pay interest on the unpaid amount at one- and one-half percent (1.5%) and shall be responsible for any collections or legal fees incurred by Contractor to collect payment. Invoices shall be deemed correct and acceptable unless District advises Contractor in writing of any disputed items within fifteen (15) days of receipt of such invoice, such written notice to include the date of the disputed invoice and sufficient detail and information to describe the basis for and amount of the dispute. Contractor reserves the right to modify the Subscription Fees and will notify District in advance of any increases. Contractor is not responsible for any bank fees, interest charges, finance charges, overdraft fees or other fees resulting from charges billed hereunder. Capitalized terms that are not defined herein shall have the meanings set forth in the Agreement.

| Category | Item | Cost | Owner | Intellis | MPS (TBD) | Rate |
|---|---|---|---|---|---|---|
| year 1 | | | | | | |
| **Planning** | | | | | | |
| | **Pre-Planning** | | | | | |
| | Setup methodology and costing | $ 9,000.00 | Intellis | 60 | | 150 |
| | Management setup | $ 9,000.00 | Intellis | 60 | | 150 |
| | Existing plans and Pipeline | $ 18,000.00 | Intellis | 120 | | 150 |
| | **Planning** | $ - | | | | 150 |
| | Establish Policies | $ 18,000.00 | Intellis | 120 | | 150 |
| | Planning activities | $ 18,000.00 | Intellis | 120 | | 150 |
| | Reconciliation | $ 3,000.00 | Intellis | 40 | | 150 |
| | **Reporting and Analysis** | $ - | | | | 150 |
| | Analysis and recommendation | $ 3,000.00 | Intellis | 20 | | 150 |
| | Create and support Reports | $ 36,000.00 | Intellis | 240 | | 150 |
| | Management | $ 18,000.00 | Intellis | 120 | | 150 |
| | **Integrations** | $ - | | | | 150 |
| | Finance | $ 6,000.00 | Intellis | 40 | | 150 |
| | PM | $ - | | | | 150 |
| | CMMS | $ - | | | | 150 |
| **Condition Assessment** | | $ - | | | | 150 |
| | **Pre-inspection** | $ - | | 0 | | 150 |
| | Setup methodology and costing | $ 6,000.00 | Intellis | 40 | | 150 |
| | Management setup | $ 6,000.00 | Intellis | 40 | | 150 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | **Inspection** | $ - | | 0 | | 150 |
| | Update unit costs | $ - | MPS | 0 | | 150 |
| | Inspection Labor | $ - | MPS | 0 | | 150 |
| | QA | $ - | MPS | 0 | | 150 |
| | Management | $ - | MPS | 0 | | 150 |
| | Support | $ - | Intellis | 0 | | 150 |
| | **Reporting and Analysis** | $ - | | 0 | | 150 |
| | Analysis and recommendation | $ 3,600.00 | Intellis | 24 | | 150 |
| | Create and support Reports | $ 12,000.00 | Intellis | 80 | | 150 |
| | Management | $ 12,000.00 | Intellis | 80 | | 150 |
| | **Other** | $ - | | | | 150 |
| | Thermography Integration | $ 12,000.00 | Intellis | 80 | | 150 |
| | Solar Panel planning | $ - | MPS | 0 | | 150 |
| | Existing Data Review | $ 12,000.00 | Intellis | 80 | | 150 |
| | **Software as a Service - Foundation ®** | **$ 170,000.00** | Intellis | | | |
| | Implementation Allowance | $ (25,500.00) | | | | |
| | | **$ 346,100.00** | | | | |

| Category | Item | Assumption |
|---|---|---|
| year 1 | | |
| **Planning** | | |
| | **Pre-Planning** | |
| | Setup methodology and costing | 1/2 time for 2 weeks at the beginning of the implementation while overlapping with the 2024 plan preparation. In preparing for the 2025 plan there will be additional support needed. 50% of that will be incurred in the first year of the contract. |
| | Management setup | 1/2 time for 2 weeks at the beginning of the implementation while overlapping with the 2024 plan preparation. In preparing for the 2025 plan there will be additional support needed. 50% of those will be incurred in the first year of the contract. |
| | Existing plans and Pipeline | TBD - 80 hours - while overlapping with the 2024 plan preparation. In preparing for the 2025 plan there will be additional support needed. 50% of those will be incurred in the first year of the contract. The estimates for this effort are subject to change due to the unknown nature. |
| | **Planning** | |
| | Establish Policies | 1/2 time for 4 weeks while overlapping with the 2024 plan preparation. In preparing for the 2025 plan there will be additional support needed. 50% of that will be incurred in the first year of the contract. |
| | Planning activities | 1/2 time for 4 weeks while overlapping with the 2024 plan preparation. In preparing for the 2025 plan there will be additional support needed. 50% of that will be incurred in the first year of the contract. |
| | Reconciliation | 1/2 time for 2 weeks 50% of the activities for the 2025 Plan will be in the first contract year ending in February |
| | **Reporting and Analysis** | |

| | | |
|---|---|---|
| | Analysis and recommendation | 1/2 time for 2 weeks 50% will be incurred in the first year of the contract. |
| | Create and support Reports | 1/2 time for 8 weeks while overlapping with the 2024 plan preparation. In preparing for the 2025 plan there will be additional support needed. 50% of that will be incurred in the first year of the contract. |
| | Management | 4 hour a week for 20 weeks |
| | **Integrations** | |
| | Finance | 1/2 time for 4 weeks 50% will be incurred in the first year of the contract. |
| | PM | |
| | CMMS | |
| **Condition Assessment** | | |
| | **Pre-inspection** | |
| | Setup methodology and costing | 1/2 time for 2 weeks |
| | Management setup | 1/4 time for 4 weeks |
| | **Inspection** | |
| | Update unit costs | |
| | Inspection Labor | |
| | QA | |
| | Management | |
| | Support | |
| | **Reporting and Analysis** | |
| | Analysis and recommendation | 4 hour a week for 6 weeks |
| | Create and support Reports | 1/2 time for 4 weeks |
| | Management | 4 hour a week for 20 weeks |
| | | |
| | **Other** | |

| | | |
|---|---|---|
| | Thermography Integration | 1/2 time for 4 weeks |
| | Solar Panel planning | |
| | Existing Data Review | TBD - 80 hours The estimates for this effort are subject to change due to the unknown nature. |
| | **Software as a Service - Foundation ®** | $0.02 per SF, 8.5M SF, January or February start |
| | Implementation Allowance | First year implementation allowance (20% of SaaS fee) |

## SERVICE LEVEL AGREEMENT

This Service Level Agreement ("**SLA**") is incorporated into and a part of the Foundation Subscription Software as a Service Agreement (the "**Agreement**"). Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Agreement. Any conflict between the terms of the Agreement and this SLA shall be resolved by giving precedence to this SLA.

### SERVICE COMMITMENT

Company will use commercially reasonable efforts to make the Services available 99.5% of the time and shall provide support coverage as further described in this SLA, excepting times of scheduled maintenance and/or emergency maintenance (as described herein).

### SUPPORT COVERAGE

Company shall provide access to Support Engineers via *email* and/or *support portal* and/or *phone.* Company business hours are 9AM EST – 5PM EST, Monday – Friday, excluding holidays. After hours support is provided but is limited to email and/or support portal.

The range of time that it will take to respond to and resolve Client tickets will depend on the severity of the underlying tickets that are submitted. Below is the description for each severity level. Client shall indicate urgency in its help ticket submitted through the helpdesk as set forth below.

- **Urgent** – A problem or issue impacting a significant group of Users or any mission critical issue affecting a single User. No workaround exists.

- **High** –Non-critical but significant issue affecting a single or multiple users; or an issue that is degrading the performance and reliability of supported services; however, the services are still operational. There is a workaround.

- **Medium** – Routine support requests that impact a single user or non-critical software or hardware error. There is a workaround.

- **Low** – A minor service issue or general inquiry. There is a workaround.

| PRIORITY | RESPOND WITHIN | RESOLVE WITHIN |
|---|---|---|
| Urgent | 1 Hour | 4 Hours |
| High | 4 Hours | 12 Hours |
| Medium | 8 Hours | 1 Day |
| Low | 1 Day | 3 Days |

**SUPPORT REQUESTS**

A Support request is a single, reproducible problem, issue, symptom, or question relating to the Foundation application that requires assistance to resolve. We will work with the customer contact (end user) to resolve the Support ticket. A Support request will ensure the consistency of intake, eliminate items from being lost or forgotten, and bring more clarity to the Client, allowing the Client to track and report through the helpdesk system.

**EXCLUSIONS**

Notwithstanding anything to the contrary, no failure to meet the service levels set forth herein shall be deemed to have occurred with respect to any unavailability, suspension or termination of the Services, or any other services performance issues, that (i) are caused by factors outside of Company's reasonable control, including, without limitation, any force majeure event, carrier related problems or issues, or Internet access or related problems beyond the demarcation point of Company or its hosting services provider (i.e., beyond the point in the network where Company maintains access and control over the Services); (ii) result from any actions or inactions of Client or any third party (other than Company's hosting services provider); (iii) result from applications, equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Company's direct control); or (iv) arise from Company's suspension and termination of Client's right to use the Services in accordance with the terms of the Agreement, (v) scheduled maintenance; or (vi) problems or issues related to alpha, beta or not otherwise generally available features or products of the Services (collectively, the "***SLA Exclusions***").

**SCHEDULED MAINTENANCE**

In order to ensure the highest levels of availability for Services, it will be necessary to schedule maintenance of the servers and Services ("**Scheduled Maintenance**"). In this case, Company will notify Client of all Scheduled Maintenance. If the Scheduled Maintenance takes longer than anticipated, an update email will be sent with a revised projection of the completion time. Company will notify Client by email or through the Services once the Scheduled Maintenance is complete that service has been resumed. Company will allow itself sufficient downtime for Scheduled Maintenance.

**EMERGENCY MAINTENANCE**

Downtime of the Services outside of the Scheduled Maintenance times may be necessary to complete the application of urgent patches or fixes, or to undertake other urgent maintenance activities ("**Emergency Maintenance**"). If Emergency Maintenance is required, Company will immediately contact Client by email

or through the Services and provide the expected start time of the Emergency Maintenance, its planned duration, and whether Company expects the Services to be unavailable during Emergency Maintenance.

Other than Client's right to terminate the Agreement for a persistent failure to maintain the service levels herein, this SLA sets forth Company's entire liability to Customer, and Customer's sole remedy, for failure or non-performance of the Services.

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND Eastside Neighborhood Services- Menlo Park**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Eastside Neighborhood Services- Menlo Park dated 2/12/2024 ("Contract") is made and entered into by and between Special School District No.1 ("District") and Eastside Neighborhood Services- Menlo Park ("Contractor") (collectively "parties').

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and Eastside Neighborhood Services- Menlo Park ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 6/30/2024 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001868

1. *Original contract amount:* **$614,902**
2. *Accumulative contract amount:* $653,483.96

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1: District's total obligation to Contractor under this Contract, including compensation for

goods, services and reimbursable expenses, shall not exceed $653,483.96. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description: Increase of contract in the amount of $38,581.96 as a sum of adjustments for Reconciliation from FY22 & FY23.**

Exhibit A - MEMORANDUM OF AGREEMENT BETWEEN THE MINNEAPOLIS PUBLIC SCHOOLS AND EASTSIDE NEIGHBORHOOD SERVICES- MENLO PARK TO SPECIFY THE AMOUNT OF SUPPORT IN ACCORDANCE WITH FORMULA SPECIFIED IN MINN. STAT. 124.D.69

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name:

Title:

Date: _____

Eastside Neighborhood Services- Menlo Park**:**

Signature: Mary Anstett

Name: Mary Anstett

Title: President

Date: 2/22/24

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND**
**Project for Pride in Living- MERC**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and **Project for Pride in Living- MERC** dated 2/12/2024 ("Contract") is made and entered into by and between Special School District No.1 ("District") and **Project for Pride in Living- MERC** ("Contractor") (collectively "parties').

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and **Project for Pride in Living- MERC** ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 6/30/2024 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001869

1. *Original contract amount:* $836,855
2. *Accumulative contract amount:* $952,807.33

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1: District's total obligation to Contractor under this Contract, including compensation for goods, services and reimbursable expenses, shall not exceed $952,807.33. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Description: Increase of contract in the amount of $115,952.33 as a sum of adjustments for Reconciliation from FY22 & FY23.

Exhibit A - MEMORANDUM OF AGREEMENT BETWEEN THE MINNEAPOLIS PUBLIC SCHOOLS AND PROJECT FOR PRIDE IN LIVING- MERC TO SPECIFY THE AMOUNT OF SUPPORT IN ACCORDANCE WITH FORMULA SPECIFIED IN MINN. STAT. 124.D.69

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

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**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name:

Title:

Date: _____

**Project for Pride in Living- MERC:**

Signature: Amy L Anlauf _____

Name: Amy L Anlauf

Title: Senior Director of Education

Date: 02/26/2024

## AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND NAWAYEE CENTER SCHOOL

This Amendment ("Amendment") to the Contract between Special School District No. 1 and **NAWAYEE CENTER SCHOOL** dated 2/12/2024 ("Contract") is made and entered into by and between Special School District No.1 ("District") and **NAWAYEE CENTER SCHOOL** ("Contractor") (collectively "parties').

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and **NAWAYEE CENTER SCHOOL** ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 6/30/2024 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001866

1. *Original contract amount:* **$486,069**
2. *Accumulative contract amount:* $544941.76

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1: District's total obligation to Contractor under this Contract, including compensation for

goods, services and reimbursable expenses, shall not exceed $544941.76. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description: Increase of contract in the amount of $58,872.76 as a sum of adjustments for Reconciliation from FY22 & FY23.**

**Exhibit A - MEMORANDUM OF AGREEMENT BETWEEN THE MINNEAPOLIS PUBLIC SCHOOLS AND VOA HIGH SCHOOL TO SPECIFY THE AMOUNT OF SUPPORT IN ACCORDANCE WITH FORMULA SPECIFIED IN MINN. STAT. 124.D.69**

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name:

Title:

Date: _____

**NAWAYEE CENTER SCHOOL:**

Signature: _____

Name: George Spears

Title: Executive Director

Date: 2-26-24

Updated January, 2020

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND**
**Project for Pride in Living- LNAS**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Project for Pride in Living- LNAS dated 2/12/2024 ("Contract") is made and entered into by and between Special School District No.1 ("District") and Project for Pride in Living- LNAS ("Contractor") (collectively "parties').

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and Project for Pride in Living- LNAS ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 6/30/2024 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001867

1. *Original contract amount:* **$586,128**
2. *Accumulative contract amount:* $600,597.02

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1: District's total obligation to Contractor under this Contract, including compensation forgoods, services and reimbursable expenses, shall not exceed $600,597.02. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description:** Increase of contract in the amount of $14,469.02 as a sum of adjustments for Reconciliation from FY22 & FY23.

Exhibit A - MEMORANDUM OF AGREEMENT BETWEEN THE MINNEAPOLIS PUBLIC SCHOOLS AND PROJECT FOR PRIDE IN LIVING - LNAS TO SPECIFY THE AMOUNT OF SUPPORT IN ACCORDANCE WITH FORMULA SPECIFIED IN MINN. STAT. 124.D.69

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name:

Title:

Date: _____

**Project for Pride in Living - LNAS:**

Signature: Amy L Anlauf

Name: Amy L Anlauf

Title: Senior Director of Education

Date: 02/26/2024

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND PYC HIGH SCHOOL**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and **PYC HIGH SCHOOL** dated 6/12/2024 ("Contract") is made and entered into by and between Special School District No.1 ("District") and **PYC HIGH SCHOOL** ("Contractor") (collectively "parties').

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and **PYC HIGH SCHOOL** ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 6/30/2024 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001870

1. *Original contract amount:* $1,316,216.84
2. *Accumulative contract amount:* $1,338,091.32

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1: District's total obligation to Contractor under this Contract, including compensation for goods, services and reimbursable expenses, shall not exceed $1,397,548.48. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Description: Increase of contract in the amount of $21,874.48 as a sum of adjustments for Reconciliation from FY22 & FY23.

Exhibit A - MEMORANDUM OF AGREEMENT BETWEEN THE MINNEAPOLIS PUBLIC SCHOOLS AND VOA HIGH SCHOOL TO SPECIFY THE AMOUNT OF SUPPORT IN ACCORDANCE WITH FORMULA SPECIFIED IN MINN. STAT. 124.D.69

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name:

Title:

Date: _____

**PYC HIGH SCHOOL:**

Signature: Melissa Denton

Name: Melissa Denton

Title: Executive Director

Date: 2/23/24

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND VOA HIGH SCHOOL**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and **VOA HIGH SCHOOL** dated 6/12/2024 ("Contract") is made and entered into by and between Special School District No.1 ("District") and **VOA HIGH SCHOOL** ("Contractor") (collectively "parties').

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and **VOA HIGH SCHOOL** ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 6/30/2024 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001873

1. *Original contract amount:* **$985,498**
2. *Accumulative contract amount:* $1,204,323.71

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1: District's total obligation to Contractor under this Contract, including compensation for goods, services and reimbursable expenses, shall not exceed $1,204,323.71 . Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description:** Increase of contract in the amount of $218,825.71 as a sum of adjustments for Reconciliation from FY22 & FY23.

Exhibit A - MEMORANDUM OF AGREEMENT BETWEEN THE MINNEAPOLIS PUBLIC SCHOOLS AND VOA HIGH SCHOOL TO SPECIFY THE AMOUNT OF SUPPORT IN ACCORDANCE WITH FORMULA SPECIFIED IN MINN. STAT. 124.D.69

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: _____

Name:

Title:

Date: _____

**VOA HIGH SCHOOL:**

Signature: Julie Manworren

Name: Julie Manworren

Title: President & CEO

Date: 02/22/2024

**Minnesota State High School League**
2100 Freeway Blvd., Brooklyn Center, MN 55430-1735
763-560-2262, Fax: 763.569.0499

# Application for Cooperative Sponsorship

**Deadline: Not later than 30 days prior to the first day of practice for that sport season.**
**PLEASE SEE BYLAW 403.2 (A-C) and 403.4 (A-D) (amended May 15, 2017) FOR INFORMATION REGARDING REQUIRED DOCUMENTATION AND APPLICATION PROCEDURE**

The governing boards of each participating school must jointly make application for cooperative sponsorship.

On behalf of the following schools, we hereby apply for cooperative sponsorship of **Boys Tennis**
beginning with the **2023 – 2024** school year. (activity) (boys' or girls') (Adapted-CI or PI)

List **ALL** schools included in the cooperative sponsorship. *Attach another form if necessary.*

| | School | Enrollment (9-12)* | City | Administrative Region** | Competitive Section** |
|---|---|---|---|---|---|
| High School **#1:** | North High School | 487 | Minneapolis | 6AA | 6AAA |
| High School **#2:** | Edison High School | 896 | Minneapolis | 6AA | 6AAA |
| High School **#3:** | | | | | |
| High School **#4:** | | | | | |

*Enrollment reported to the State of Minnesota on October 1 of the previous school year. **Current (Number and Class)

**1.** Do any of the above schools belong to a conference in this activity?
x☐ **Yes** This application must include a review and comments from the conference(s) of which the schools are members.
☐ **No**

**2.** Do any of the above schools currently have a cooperative agreement in this activity?
☐ **Yes** An application for dissolution must be submitted for the existing agreement.
x☐ **No**

**3.** Describe the conditions which have prompted your request to co-sponsor this activity. (See model resolution at www.mshsl.org/About MSHSL/Membership Information: A History & Model Resolution for School Boards)

**Edison High School does not currently have a boys tennis coach. By co-oping, these allows these athletes from these schools, the opportunity to participate in athletics for this sport.**

**4.** List the number of students, by grade level, who participated in this activity during the previous year. *If the school did not sponsor the program last year, indicate the number of students expected to participate in this cooperatively-sponsored activity this year if approved.*

| | 7th | 8th | 9th | 10th | 11th | 12th |
|---|---|---|---|---|---|---|
| High School **#1** | | | | 7 | 2 | |
| High School **#2** | | | | 3 | 2 | 3 |
| High School **#3** | | | | | | |
| High School **#4** | | | | | | |

**5.** Team Identification: (Indicate how cooped schools should be identified in tournament programs):
**Minneapolis North High School**

**6.** Team Colors: **Royal Blue and White** Team Mascot: **Polars**

**7.** Host School (school that will receive revenue share check): **Minneapolis North High School**

| Board of Education (or designee) | School | Date |
|---|---|---|
| Signed_____ | _____ | _____ |
| Signed_____ | _____ | _____ |
| Signed_____ | _____ | _____ |
| Signed_____ | _____ | _____ |

**Official Action of the MSHSL Board of Directors**

☐ Approved ☐ Not Approved

Signature: _____ Date: _____

MSHSL Executive Director

**MINNEAPOLIS PUBLIC SCHOOLS**
**RESOLUTION 2024-0016**

**RESOLUTION AMENDING POLICY 5391**

**WHEREAS,** The Board's Policy Committee has recommended the proposed changes.

**NOW THEREFORE BE IT RESOLVED,** that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

**SECTION 1:** **AMENDMENT** "Policy 5391: Graduation Requirements" of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

A M E N D M E N T

Policy 5391: Graduation Requirements

1. **PURPOSE**
~~This policy is to establish the requirements for graduation from Minneapolis Public Schools in compliance with Minnesota law and statewide graduation standards established thereby.~~The purpose of this policy is to set forth requirements for graduation from the school district.
2. **GENERAL STATEMENT OF POLICY**
~~All students must complete the following requirements in order to earn a diploma for graduation from a Minneapolis Public High School.~~The policy of the school district is that all students must demonstrate, as determined by the school district, their satisfactory completion of the credit requirements and their understanding of academic standards. The school district must adopt graduation requirements that meet or exceed state graduation requirements established in law or rule.
3. **DEFINITIONS**
    a. "Credit" means a student's successful completion of an academic year of study or a student's mastery of the applicable subject matter, as determined by the school district.
    b. "Individualized Education Program" or "IEP" means a written statement developed for a student eligible by law for special education and services.
    c. "English language learners" or "ELL" student means an individual whose first language is not English and whose test performance may be negatively impacted by lack of English language proficiency.
    d. "Required standard" means: (1) a statewide adopted expectation for student learning in the content areas of language arts, mathematics, science, social studies, physical education, and the arts, and (2) a locally adopted expectation for student learning in health.
    e. "Section 504 Accommodation" means the defined appropriate

accommodations or modifications that must be made in the school environment to address the needs of an individual student with disabilities.

4. **DISTRICT ASSESSMENT COORDINATOR**
   The senior leader of the research, evaluation, assessment department shall be named the District Assessment Coordinator. Said person shall be in charge of all test procedures and shall bring recommendations to the school board annually for approval.
5. **GRADUATION ASSESSMENT REQUIREMENTS**
   Students' state graduation requirements, based on a longitudinal, systematic approach to student education and career planning, assessment, instructional support, and evaluation, include the following:
   a. Achievement and career and college readiness in mathematics, reading, and writing, as measured against a continuum of empirically derived, clearly defined benchmarks focused on students' attainment of knowledge and skills so that students, their parents, and teachers know how well students must perform to have a reasonable chance to succeed in a career or college without the need for postsecondary remediation and which facilitates the monitoring of students' continuous development of and growth in requisite knowledge and skills; analysis of students' progress and performance levels, identification of students' academic strengths and diagnosis of areas where students require curriculum or instructional adjustments, targeted interventions, or remediation; and determination of students' learning and instructional needs and the instructional tools and best practices that support academic rigor for the student based on analysis of students' progress and performance data; and
   b. Consistent with this paragraph and Minnesota Statutes section 120B.125, age-appropriate exploration and planning activities and career assessments to encourage students to identify personally relevant career interests and aptitudes and help students and their families develop a regularly reexamined transition plan for postsecondary education or employment without need for postsecondary remediation.
   c. Based on appropriate state guidelines, students with an IEP may satisfy state graduation requirements by achieving an individual score on the state-identified alternative assessments.
   d. Students meeting the state graduation requirements under this section must receive targeted, relevant, academically rigorous, and resourced instruction which may include a targeted instruction and intervention plan focused on improving the student's knowledge and skills in core subjects so that the student has a reasonable chance to succeed in a career or college without need for postsecondary remediation.
   e. Students meeting the state graduation requirements under this section and who are students in grade 11 or 12 and who are identified as academically ready for a career or college are actively encouraged by the school district to participate in courses and programs awarding college credit to high school students. Students are not required to achieve a specified score or level of proficiency on an assessment to graduate from high school.

f. A student's progress toward career and college readiness must be recorded on the student's high school transcript.

6. **GRADUATION CREDIT REQUIREMENTS**

a. Four credits of language arts sufficient to satisfy all academic standards in English language arts;

b. Three credits of mathematics, encompassing algebra II, integrated mathematics III, or an equivalent in high school, and to be prepared for the three credits of mathematics in grades 9 through 12, the grade 8 standards include completion of algebra;

c. Three credits of science, including one credit to satisfy all the earth and space science standards for grades 9 through 12, one credit to satisfy all the life science standards for grades 9 through 12, and one credit to satisfy all the chemistry or physics standards for grades 9 through 12;

d. Three and one-half credits of social studies, including credit for a course in government and citizenship in either grade 11 or 12 for students beginning grade 9 in the 2024-2025 school year and later or an advanced placement, international baccalaureate, or other rigorous course on government and citizenship under section 120B.021, subdivision 1a, and a combination of other credits encompassing at least United States history, geography, government and citizenship, world history, and economics sufficient to satisfy all of the academic standards in social studies;

e. One credit of the arts sufficient to satisfy all of the academic standards in the arts. Public elementary and middle schools must offer at least three and require at least two of the following five arts areas: dance; media arts; music; theater; and visual arts. Public high schools must offer at least three and require at least one of the following five arts areas: media arts; dance; music; theater; and visual arts;

f. Credits sufficient to satisfy the state standards in physical education;

g. Health, for which locally developed academic standards apply. The department may modify SHAPE America (Society of Health and Physical Educators) standards and adapt the national standards to accommodate state interest. The modification and adaptations must maintain the purpose and integrity of the national standards. The department must make available sample assessments, which school districts may use as an alternative to local assessments, to assess students' mastery of the physical education standards beginning in the 2018-2019 school year. A school district may include child sexual abuse prevention instruction in a health curriculum, consistent with locally developed health standards. Child sexual abuse prevention instruction may include age-appropriate instruction on recognizing sexual abuse and assault, boundary violations, and ways offenders groom or desensitize victims, as well as strategies to promote disclosure, reduce self-blame, and mobilize bystanders. A school district may provide instruction under this paragraph in a variety of ways, including at an annual assembly or classroom presentation. A school district may also provide parents information on the warning signs of

child sexual abuse and available resources; and

h. A minimum of seven elective credits.

i. Students who begin grade 9 in the 2024-2025 school year and later must successfully complete a course for credit in personal finance in grade 10, 11, or 12. A teacher of a personal finance course that satisfies the graduation requirement must have a field license or out-of-field permission in agricultural education, business, family and consumer science, social studies, or math.

j. For purposes of applicable federal law, the academic standards for language arts, mathematics, and science apply to all public school students, except the very few students with extreme cognitive or physical impairments for whom an individualized education program team has determined that the required academic standards are inappropriate. An individualized education program team that makes this determination must establish alternative standards.

k. Credit equivalencies

    i. A one-half credit of economics taught in a school's agricultural, food, and natural resources education or business education program or department may fulfill a one-half credit in social studies as referenced in Section 6.d.

    ii. An agriculture science or career and technical education credit may fulfill the elective science credit required under Section 6.c, if the credit meets the state physical science, life science, earth and space science, chemistry, or physics academic standards or a combination of these academic standards as approved by the district. An agriculture or career and technical education credit may fulfill the credit in chemistry or physics required under Section 6.c, if the credit meets the state chemistry or physics academic standards as approved by the district. A student must satisfy either all of the chemistry academic standards or all of the physics academic standards prior to graduation. An agriculture science or career and technical education credit may not fulfill the required biology credit under Section 6.c.

    iii. An agricultural, food, and natural resources education teacher is not required to meet the requirements of Minnesota Rules, part 3505.1150, subpart 2, item B, to meet the credit equivalency requirements of Section 6.k.ii.

    iv. A career and technical education credit may fulfill a mathematics or arts credit requirement under Section 6.b. or 6.e.

    v. A computer science credit may fulfill a mathematics credit requirement under Section 6.b., if the credit meets state academic standards in mathematics.

    vi. A Project Lead the Way credit may fulfill a mathematics or science credit requirement under Section 6.b. or 6.c, if the credit meets the state academic standards in mathematics or science.

    vii. An ethnic studies course may fulfill a social studies, language arts, arts, math, or science credit if the course meets the applicable state

academic standards. An ethnic studies course may fulfill an elective credit if the course meets applicable local standards or other requirements.

7. **OTHER GRADUATION REQUIREMENTS**
   a. *Testing*. Students must meet state testing requirements.
   b. *Personal Learning Plan*. Each student must develop a plan for smooth and successful transition to postsecondary education or employment and meet yearly milestones established in that plan.
   c. *Ethnic Studies Course*. Each student, beginning with those graduating in 2025, must earn a passing grade in an Ethnic Studies course.

8. **EARLY GRADUATION**
   a. All course or standards and credit requirements must be met;
   b. The principal or designee shall conduct an interview with the student and parent or guardian, familiarize the parties with opportunities available in post-secondary education, and arrive at a timely decision; and
   c. The principal's decision shall be in writing and may be subject to review by the superintendent and school board.

~~9. **CREDIT REQUIREMENTS FOR GRADUATION**~~
   ~~a. Required Credits. A minimum of twenty-one and a half (21.5) year-long credits is required for graduation. These credits include:~~
      ~~i. Four (4) year-long credits in Language Arts.~~
      ~~ii. Three and a half (3.5) year-long credits in Social Studies encompassing~~
         ~~(1) United States history,~~
         ~~(2) human geography,~~
         ~~(3) world history, and~~
         ~~(4) government and citizenship, and~~
         ~~(5) economics. Economics courses may be taught through the social studies department or the business department.~~
      ~~iii. Three (3) year-long credits in Mathematics encompassing, at a minimum:~~
         ~~(1) One (1) year-long credit in geometry~~
         ~~(2) One (1) year-long credit in algebra II or statistics and probability~~
         ~~(3) Completion of an Algebra I course credit while enrolled in grades nine through twelve (9-12) shall earn an elective credit only.~~
      ~~iv. Three (3) year-long credits in Science, encompassing at a minimum~~:
         ~~(1) One (1) year-long credit in biology; and~~
         ~~(2) One (1) year-long credit in either chemistry or physics.~~
      ~~v. One (1) year-long credit in the arts;~~
      ~~vi. One half (0.5) year-long credit in Physical Education;~~
      ~~vii. One half (0.5) year-long credit in Health;~~
      ~~viii. Five and one half (5.5) year-long elective credits.~~

b. Career and Technical Education Courses. The Superintendent may designate certain career and technical education courses that meet the same academic standards to satisfy the credit requirements of the science, mathematics or arts requirements established above.

10. **OTHER GRADUATION REQUIREMENTS**
    a. Testing. Students must meet state testing requirements.
    b. Personal Learning Plan. Each student must develop a plan for smooth and successful transition to postsecondary education or employment and meet yearly milestones established in that plan.
    c. Ethnic Studies Course. Each student, beginning with those graduating in 2025, must earn a passing grade in an Ethnic Studies course.
11. **DEFINITIONS**
    a. "year-long credit" is the equivalent of the successful completion of an academic year of study or student mastery of applicable state standards.
    b. "Personal Learning Plan" is the plan using the career and college exploration and decision assisting curriculum framework used by Minneapolis Public Schools.
    c. "Ethnic Studies courses" are identified as such by the Teaching & Learning Department and include explicit exploration of identity and intersectionality, prioritize the history and culture of historically marginalized groups, include the history and current role of race, racism, and anti-racist work, and include interdisieplinary learning that leads to action.
12. **IMPLEMENTATION**
    a. The Superintendent may develop procedures and policies to implement this policy.
    b.

**Original Adoption:**
01/07/1974

**Revision Dates:**
04/08/1980, 06/12/1984, 08/13/1985, 07/15/1986, 09/26/1989, 06/30/1998, 6/26/2007, 11/10/2009, 01/13/2015, 11/10/2020

**Legal References:**

- Minn. Stat. § 120B.018 (Definitions)
- Minn. Stat. § 120B.02 (Educational Expectations and Graduation Requirements for Minnesota's Students)
- Minn. Stat. § 120B.021 (Required Academic Standards)
- Minn. Stat. § 120B.023 (Benchmarks)
- Minn. Stat. § 120B.024 (Credits)
- Minn. Stat. § 120B.07 (Early Graduation)
- Minn. Stat. § 120B.11 (School District Process for Reviewing Curriculum, Instruction, and Student Achievement; Striving for the World's Best Workforce)

- Minn. Stat. § 120B.125 (Planning for Students' Successful Transition to Postsecondary Education and Employment; Personal Learning Plans)
- Minn. Stat. § 120B.30 (Statewide Testing and Reporting System)
- Minn. Rules Parts 3501.0640-3501.0655 (Academic Standards for Language Arts)
- Minn. Rules Parts 3501.0700-3501.0745 (Academic Standards for Mathematics)
- Minn. Rules Part 3501.0820 (Academic Standards for the Arts)
- Minn. Rules Parts 3501.0900-3501.0955 (Academic Standards in Science)
- Minn. Rules Parts 3501.1300-3501.1345 (Academic Standards for Social Studies)
- Minn. Rules Parts 3501.1400-3501.1410 (Academic Standards for Physical Education)
- 20 U.S.C. § 6301, et seq. (Every Student Succeeds Act)
- ~~Minn. Stat. §120B.02 (Educational Expectations for Minnesota's Students)Minn. Stat. §120B.023 (Benchmarks)Minn. Stat. §120B.024 (Graduation Requirements; Course Credits)Minn. Stat. §120B.11 (School District Process)Minn. Rules Parts 3501.0505 – 3501.0635 (K-12 Standards)~~

**MPS Policy Cross References:**

- Policy 6273 (Local Standards and Assessments)
- Policy 6274 (State Required Assessments)
- Regulation 5391 A (Granting Credits)
- Regulation 5391 B (Graduation Requirements for Transfer Students)

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

| | **AYE** | **NAY** | **ABSENT** | **ABSTAIN** |
|---|---|---|---|---|
| Abdi | _____ | _____ | _____ | _____ |
| Beachy | _____ | _____ | _____ | _____ |
| Cerrillo | _____ | _____ | _____ | _____ |
| El-Amin | _____ | _____ | _____ | _____ |
| Ellison | _____ | _____ | _____ | _____ |
| Emerick | _____ | _____ | _____ | _____ |
| Feerayarre | _____ | _____ | _____ | _____ |
| Jourdain | _____ | _____ | _____ | _____ |
| Norvell | _____ | _____ | _____ | _____ |

Presiding Officer

_____
Collin Beachy, Chair, Minneapolis Public Schools

Attest

_____
Lori Norvell, Clerk, Minneapolis Public Schools

**MINNEAPOLIS PUBLIC SCHOOLS**
**RESOLUTION 2024-0017**

**RESOLUTION AMENDING POLICY 5690**

**WHEREAS,** The Board's Policy Committee has recommended the proposed changes.

**NOW THEREFORE BE IT RESOLVED,** that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

**SECTION 1:** **AMENDMENT** "Policy 5690: Student Data" of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

A M E N D M E N T

Policy 5690: Student Data

1. **PURPOSE**
   The school district recognizes its responsibility in regard to the collection, maintenance, and dissemination of pupil records and the protection of the privacy rights of students as provided in federal law and state statutes.
2. **GENERAL STATEMENT OF POLICY**
   The following procedures and policies regarding the protection and privacy of parents and students are adopted by the school district, pursuant to the requirements of 20 U.S.C. § 1232g, et seq., (Family Educational Rights and Privacy Act (FERPA)) 34 C.F.R. Part 99 and consistent with the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, and Minnesota Rules Parts 1205.0100-1205.2000.
3. **DEFINITIONS**
   a. "*Authorized representative*" means any entity or individual designated by the school district, state, or an agency headed by an official of the Comptroller of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or state and local educational authorities to conduct, with respect to federal or state supported education programs, any audit or evaluation or any compliance or enforcement activity in connection with federal legal requirements that relate to these programs.
   b. "*Biometric record*," as referred to in "*Personally Identifiable*," means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual (e.g., fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting).
   c. "*Dates of attendance*," as referred to in "*Directory Information*," means the period of time during which a student attends or attended a school or schools

in the school district, including attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not in the classroom, and including the period during which a student is working under a work-study program. The term does not include specific daily records of a student's attendance at a school or schools in the school district.

d. "*Directory information*" means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.
    i. *General Public Access.* The following information is designated as directory information to any member of the public not identified in section 3.d.ii:
        (1) Name, height and weight of individual members of athletic teams;
        (2) Name of recipient and name of award or scholarship received, and
        (3) Names of participants in officially recognized school activities.
    ii. *Government Agency Access.* In addition to the information available to the general public, the following information is designated as directory information regarding any student or the student's identified parent or person acting as the parent to the student to any properly identified member of a governmental agency:
        (1) Name
        (2) School of enrollment
        (3) Photograph, audio or video image
        (4) Date of Birth
        (5) Dates of attendance
        (6) Grade level
    iii. Directory information does not include:
        (1) a student's social security number;
        (2) a student's home address, telephone number, email address, or other personal contact information;
        (3) a student's identification number (ID), user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems if the identifier may be used to access education records without use of one or more factors that authenticate the student's identity such as a personal identification number (PIN), password, or other factors known or possessed only by the authorized user;
        (4) a student ID or other unique personal identifier that is displayed on a student ID badge if the identifier can be used to gain access to educational records when used in conjunction with one or more factors that authenticate the

student's identity, such as a PIN, password, or other factor known or possessed only by the student;

(5) personally identifiable data which references religion, race, color, social position, or nationality; or

(6) data collected from nonpublic school students, other than those who receive shared time educational services, unless written consent is given by the student's parent or guardian.

e. "*Education Records*"

i. What constitutes "education records." Education records means those records that are: (1) directly related to a student; and (2) maintained by the school district or by a party acting for the school district.

ii. What does not constitute education records. The term, "education records," does not include:

(1) Records of instructional personnel that are:

(A) kept in the sole possession of the maker of the record;

(B) used only as a personal memory aid;

(C) not accessible or revealed to any other individual except a temporary substitute teacher; and

(D) destroyed at the end of the school year.

(2) Records relating to an individual, including a student, who is employed by the school district which:

(A) are made and maintained in the normal course of business;

(B) relate exclusively to the individual in that individual's capacity as an employee; and

(C) are not available for use for any other purpose.

However, records relating to an individual in attendance at the school district who is employed as a result of his or her status as a student are education records.

(3) Records relating to an eligible student, or a student attending an institution of post-secondary education, that are:

(A) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity or assisting in that capacity;

(B) made, maintained, or used only in connection with the provision of treatment to the student; and

(C) disclosed only to individuals providing the treatment; provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are a part of the

program of instruction within the school district.

(4) Records created or received by the school district after an individual is no longer a student at the school district and that are not directly related to the individual's attendance as a student.

(5) Grades on peer-related papers before the papers are collected and recorded by the teacher.

f. "*Eligible student*" means a student who has attained eighteen (18) years of age or is attending an institution of post-secondary education.

g. "*Juvenile justice system*" includes criminal justice agencies and the judiciary when involved in juvenile justice activities.

h. "*Legitimate educational interest*" includes an interest directly related to classroom instruction, teaching, student achievement and progress, discipline of a student, student health and welfare, and the ability to respond to a request for education data. It includes a person's need to know in order to:

   i. Perform an administrative task required in the school or employee's contract or position description approved by the school board;

   ii. Perform a supervisory or instructional task directly related to the student's education;

   iii. Perform a service or benefit for the student or the student's family such as health care, counseling, student job placement, or student financial aid; or

   iv. Perform a task directly related to responding to a request for data.

i. "*Parent*" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent of the student in the absence of a parent or guardian. The school district may presume the parent has the authority to exercise the rights provided herein, unless it has been provided with evidence that there is a state law or court order governing such matters as marriage dissolution, separation or child custody, or a legally binding instrument which provides to the contrary.

j. "*Personally identifiable*" means that the data or information includes, but is not limited to: (a) a student's name; (b) the name of the student's parent or other family member; (c) the address of the student or student's family; (d) a personal identifier such as the student's social security number or student number or biometric record; (e) other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) information requested by a person who the school district reasonably believes knows the identity of the student to whom the education record relates.

k. "*Record*" means any information or data recorded in any way including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

l. "*Responsible authority*" means the individual designated by the School Board.
m. "*Student*" includes any individual who is or has been in attendance, enrolled, or registered at the school district and regarding whom the school district maintains education records. Student also includes applicants for enrollment or registration at the school district and individuals who receive shared time educational services from the school district.

n. "*School official*" includes: (a) a person duly elected to the school board; (b) a person employed by the school board in an administrative, supervisory, instructional, or other professional position; (c) a person employed by the school board as a temporary substitute in a professional position for the period of his or her performance as a substitute; and (d) a person employed by, or under contract to, the school board to perform a special task such as a secretary, a clerk, a public information officer or data practices compliance official, an attorney, or an auditor for the period of his or her performance as an employee or contractor.
o. "*Summary data*" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify the individual is ascertainable.
p. All other terms and phrases shall be defined in accordance with applicable state and federal law or ordinary customary usage.

4. **GENERAL CLASSIFICATION**
   a. State law provides that all data collected, created, received, or maintained by a school district are public unless classified by state or federal law as not public or private or confidential. State law classifies all data on individuals maintained by a school district which relates to a student as private data on individuals. This data may not be disclosed to parties other than the parent or eligible student without consent, except pursuant to a valid court order, certain state statutes authorizing access, and the provisions of FERPA and the regulations promulgated thereunder.
5. **STATEMENT OF RIGHTS**
   a. *Rights of Parents and Eligible Students*
      Parents and eligible students have the following rights under this policy:
      i. The right to inspect and review the student's education records;
      ii. The right to request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;
      iii. The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that such consent is not required for disclosure pursuant to this policy, state or federal law, or the regulations promulgated thereunder;
      iv. The right to refuse release of names, addresses, and home telephone numbers of students in grades 11 and 12 to military recruiting officers and post-secondary educational institutions;

v. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the school district to comply with the federal law and the regulations promulgated thereunder;
vi. The right to be informed about rights under the federal law; and
vii. The right to obtain a copy of this policy at the location set forth in Section 21 of this policy.

b. *Eligible Students*
All rights and protections given to parents under this policy transfer to the student when he or she reaches eighteen (18) years of age or enrolls in an institution of post-secondary education. The student then becomes an "eligible student." However, the parents of an eligible student who is also a "dependent student" are entitled to gain access to the education records of such student without first obtaining the consent of the student. In addition, parents of an eligible student may be given access to education records in connection with a health or safety emergency if the disclosure meets the conditions of any provision set forth in 34 C.F.R. § 99.31(a).

c. *Students with a Disability*
The school district shall also follow 34 C.F.R. §§ 300.610-300.617 with regard to the privacy, notice, access, record keeping and accuracy of information related to students with a disability.

6. **DISCLOSURE OF EDUCATION RECORDS**

a. *Consent Required for Disclosure*
i. The school district shall obtain a signed and dated written informed consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of the student, except as provided herein.
ii. The written consent required by this subdivision must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:
(1) a specification of the records to be disclosed;
(2) the purpose or purposes of the disclosure;
(3) the party or class of parties to whom the disclosure may be made;
(4) the consequences of giving informed consent; and
(5) if appropriate, a termination date for the consent.
iii. When a disclosure is made under this subdivision:
(1) if the parent or eligible student so requests, the school district shall provide him or her with a copy of the records disclosed; and
(2) if the parent of a student who is not an eligible student so requests, the school district shall provide the student with a copy of the records disclosed.
iv. A signed and dated written consent may include a record and signature in electronic form that:
(1) identifies and authenticates a particular person as the source

of the electronic consent; and

(2) indicates such person's approval of the information contained in the electronic consent.

v. If the responsible authority seeks an individual's informed consent to the release of private data to an insurer or the authorized representative of an insurer, informed consent shall not be deemed to have been given unless the statement is:

(1) in plain language;
(2) dated;
(3) specific in designating the particular persons or agencies the data subject is authorizing to disclose information about the data subject;
(4) specific as to the nature of the information the subject is authorizing to be disclosed;
(5) specific as to the persons or agencies to whom the subject is authorizing information to be disclosed;
(6) specific as to the purpose or purposes for which the information may be used by any of the parties named in Clause e. above, both at the time of the disclosure and at any time in the future; and
(7) specific as to its expiration date which should be within a reasonable time, not to exceed one year except in the case of authorizations given in connection with applications for: (i) life insurance or noncancellable or guaranteed renewable health insurance and identified as such, two years after the date of the policy, or (ii) medical assistance under Minnesota Statutes Chapter 256B or Minnesota Care under Minnesota Statute Chapter 256L, which shall be ongoing during all terms of eligibility, for individualized education program health-related services provided by a school district that are subject to third party reimbursement.

vi. *Eligible Student Consent*

Whenever a student has attained eighteen (18) years of age or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except as provided in section 5 of this policy.

b. *Prior Consent for Disclosure Not Required*

The school district may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student unless otherwise provided herein, if the disclosure is:

i. To other school officials, including teachers, within the school district whom the school district determines have a legitimate educational

interest in such records;

ii. To a contractor, consultant, volunteer, or other party to whom the school district has outsourced institutional services or functions provided that the outside party:
    (1) performs an institutional service or function for which the school district would otherwise use employees;
    (2) is under the direct control of the school district with respect to the use and maintenance of education records; and
    (3) will not disclose the information to any other party without the prior consent of the parent or eligible student and uses the information only for the purposes for which the disclosure was made.

iii. To officials of other schools, school districts, or post-secondary educational institutions in which the student seeks or intends to enroll, or is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer. The records shall include information about disciplinary action taken as a result of any incident in which the student possessed or used a dangerous weapon, and with proper annual notice (see Section 19), suspension and expulsion information pursuant to section 7917 of the federal Every Student Succeeds Act, 20 U.S.C. § 7917, and, if applicable, data regarding a student's history of violent behavior. The records also shall include a copy of any probable cause notice or any disposition or court order under Minnesota Statutes 260B.171, unless the data are required to be destroyed under Minnesota Statutes 120A.22, Subdivision 7(c) or section 121A.75. On request, the school district will provide the parent or eligible student with a copy of the education records that have been transferred and provide an opportunity for a hearing to challenge the content of those records in accordance with Section 15 of this policy;

iv. To authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or the Commissioner of the State Department of Education or his or her representative, subject to the conditions relative to such disclosure provided under federal law;

v. In connection with financial aid for which a student has applied or has received, if the information is necessary for such purposes as to:
    (1) To state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to state statute adopted:
        (A) determine eligibility for the aid;
        (B) determine the amount of the aid;
        (C) determine conditions for the aid; or

(D) enforce the terms and conditions of the aid.

"Financial aid" for purposes of this provision means a payment of funds provided to an individual or a payment in kind of tangible or intangible property to the individual that is conditioned on the individual's attendance at an educational agency or institution;

vi. To state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to state statute adopted:
   (1) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released; or
   (2) after November 19, 1974, if the reporting or disclosure allowed by state statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, provided the officials and authorities to whom the records are disclosed certify in writing to the school district that the data will not be disclosed to any other party, except as provided by state law, without the prior written consent of the parent of the student. At a minimum, the school district shall disclose the following information to the juvenile justice system under this paragraph: a student's full name, home address, telephone number, and date of birth; a student's school schedule, attendance record, and photographs, if any; and parents' names, home addresses, and telephone numbers;

vii. To organizations conducting studies for or on behalf of educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction; provided that the studies are conducted in a manner which does not permit the personal identification of parents or students by individuals other than representatives of the organization who have a legitimate interest in the information, the information is destroyed when no longer needed for the purposes for which the study was conducted, and the school district enters into a written agreement with the organization that: (a) specifies the purpose, scope, and duration of the study or studies and the information to be disclosed; (b) requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement; (c) requires the organization to conduct the study in a manner that does not permit personal identification of parents and students by anyone other than

representatives of the organization with legitimate interests; and (d) requires the organization to destroy all personally identifiable information when information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed. For purposes of this provision, the term, "organizations," includes, but is not limited to, federal, state, and local agencies and independent organizations. In the event the Department of Education determines that a third party outside of the school district to whom information is disclosed violates this provision, the school district may not allow that third party access to personally identifiable information from education records for at least five (5) years;

viii. To accrediting organizations in order to carry out their accrediting functions;

ix. To parents of a student eighteen (18) years of age or older if the student is a dependent of the parents for income tax purposes;

x. To comply with a judicial order or lawfully issued subpoena, provided, however, that the school district makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance therewith so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with a federal grand jury subpoena, or any other subpoena issued for law enforcement purposes, and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, or the disclosure is in compliance with an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. § 2332b(g)(5)(B), an act of domestic or international terrorism as defined in 18 U.S.C. § 2331, or a parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of the proceeding. If the school district initiates legal action against a parent or student, it may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the school district to proceed with the legal action as a plaintiff. Also, if a parent or eligible student initiates a legal action against the school district, the school district may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the school district to defend itself;

xi. To appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health, including the mental health, or safety of the student or other individuals. The decision is to be based upon information available at the time the threat occurs that indicates that

there is an articulable and significant threat to the health or safety of a student or other individuals. In making a determination whether to disclose information under this section, the school district may take into account the totality of the circumstances pertaining to a threat and may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other students. A record of this disclosure must be maintained pursuant to Section 13.E. of this policy. In addition, an educational agency or institution may include in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community. This information may be disclosed to teachers and school officials within the school district and/or teachers and school officials in other schools who have legitimate educational interests in the behavior of the student;

xii. To the juvenile justice system if information about the behavior of a student who poses a risk of harm is reasonably necessary to protect the health or safety of the student or other individuals;
xiii. Information the school district has designated as "directory information" pursuant to Section 7 of this policy;
xiv. To military recruiting officers and post-secondary educational institutions pursuant to Section 11 of this policy;
xv. To the parent of a student who is not an eligible student or to the student himself or herself;
xvi. To appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiologic investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public educational agency or institution in which the investigation is being conducted;
xvii. To volunteers who are determined to have a legitimate educational interest in the data and who are conducting activities and events sponsored by or endorsed by the educational agency or institution for students or former students;
xviii. To the juvenile justice system, on written request that certifies that the information will not be disclosed to any other person except as authorized by law without the written consent of the parent of the student:
    (1) the following information about a student must be disclosed: a student's full name, home address, telephone number, date of birth; a student's school schedule, daily attendance record, and photographs, if any; and any parents' names, home addresses, and telephone numbers;
    (2) the existence of the following information about a student, not

the actual data or other information contained in the student's education record, may be disclosed provided that a request for access must be submitted on the statutory form and it must contain an explanation of why access to the information is necessary to serve the student: (1) use of a controlled substance, alcohol, or tobacco; (2) assaultive or threatening conduct that could result in dismissal from school under the Pupil Fair Dismissal Act; (3) possession or use of weapons or look-alike weapons; (4) theft; or (5) vandalism or other damage to property. Prior to releasing this information, the principal or chief administrative officer of a school who receives such a request must, to the extent permitted by federal law, notify the student's parent or guardian by certified mail of the request to disclose information. If the student's parent or guardian notifies the school official of an objection to the disclosure within ten (10) days of receiving certified notice, the school official must not disclose the information and instead must inform the requesting member of the juvenile justice system of the objection. If no objection from the parent or guardian is received within fourteen (14) days, the school official must respond to the request for information.

The written requests of the juvenile justice system member(s), as well as a record of any release, must be maintained in the student's file.

xix. To the principal where the student attends and to any counselor directly supervising or reporting on the behavior or progress of the student if it is information from a disposition order received by a superintendent under Minnesota Statutes section 260B.171, Subdivision 3. The principal must notify the counselor immediately and must place the disposition order in the student's permanent education record. The principal also must notify immediately any teacher or administrator who directly supervises or reports on the behavior or progress of the student whom the principal believes needs the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. The principal may also notify other school district employees, substitutes, and volunteers who are in direct contact with the student if the principal determines that these individual need the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Such notices from the principal must identify the student, outline the offense, and describe any conditions of probation about which the school must provide

information if this information is provided in the disposition order. Disposition order information received is private educational data received for the limited purpose of serving the educational needs of the student and protecting students and staff. The information may not be further disseminated by the counselor, teacher, administrator, staff member, substitute, or volunteer except as necessary to serve the student, to protect students and staff, or as otherwise required by law, and only to the student or the student's parent or guardian;

xx. To the principal where the student attends if it is information from a peace officer's record of children received by a superintendent under Minnesota Statutes section 260B.171, Subdivision 5. The principal must place the information in the student's education record. The principal also must notify immediately any teacher, counselor, or administrator directly supervising the student whom the principal believes needs the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. The principal may also notify other district employees, substitutes, and volunteers who are in direct contact with the student if the principal determines that these individuals need the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Such notices from the principal must identify the student and describe the alleged offense if this information is provided in the peace officer's notice. Peace officer's record information received is private educational data received for the limited purpose of serving the educational needs of the student and protecting students and staff. The information must not be further disseminated by the counselor, teacher administrator, staff member, substitute, or volunteer except to communicate with the student or the student's parent or guardian as necessary to serve the student, to protect students and staff, or as otherwise required by law.

    The principal must delete the peace officer's record from the student's education record, destroy the data, and make reasonable efforts to notify any teacher, counselor, staff member, administrator, substitute, or volunteer who received information from the peace officer's record if the county attorney determines not to proceed with a petition or directs the student into a diversion or mediation program or if a juvenile court makes a decision on a petition and the county attorney or juvenile court notifies the superintendent of such action;

xxi. To the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of state and

local educational and other agencies and institutions receiving funding or providing benefits of one or more programs authorized under the National School Lunch Act or the Child Nutrition Act of 1966 for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that: (a) any data collected shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and (b) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements; or

xxii. To an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in 25 U.S.C. § 5304), who has the right to access a student's case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.

xxiii. To a public library of a student's name, home address, telephone number, email address, or other personal contact information for the purpose of issuing a library card to the student; or

xxiv. To a federally recognized tribal nation about a tribally enrolled or descendant student to the extent necessary to support the educational attainment of the student.

c. *Nonpublic School Students*

The school district may disclose personally identifiable information from the education records of a nonpublic school student, other than a student who receives shared time educational services, without the written consent of the parent of the student or the eligible student unless otherwise provided herein, if the disclosure is:

i. Pursuant to a valid court order;

ii. Pursuant to a statute specifically authorizing access to the private data; or

iii. To appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiological investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public educational agency or institution in which the investigation is being conducted.

7. **RELEASE OF DIRECTORY INFORMATION**

a. *Educational Data*

i. Educational data designated as directory information is public data on individuals to the extent required under federal law. Directory information must be designated pursuant to the provisions of:

(1) Minnesota Statutes, section 13.32, subdivision 5; and

(2) United States Code, title 20, section 1232g, and Code of Federal Regulations, title 34, section 99.37, which were in effect on January 3, 2012.

ii. The school district may not designate a student's home address, telephone number, email address, or other personal contact information as directory information under this section.

iii. When requested, the school district must share personal contact information and directory information, whether public or private, with the Minnesota Department of Education, as required for federal reporting purposes.

b. *Former Students*

Unless a former student validly opted out of the release of directory information while the student was in attendance and has not rescinded the opt out request at any time, the school district may disclose directory information from the education records generated by it regarding the former student without meeting the requirements of Paragraph C. of this section. In addition, under an explicit exclusion from the definition of an "education record," the school district may release records that only contain information about an individual obtained after he or she is no longer a student at the school district and that are not directly related to the individual's attendance as a student (e.g., a student's activities as an alumnus of the school district).

c. *Present Students and Parents*

The school district may disclose directory information from the education records of a student and information regarding parents without prior written consent of the parent of the student or eligible student, except as provided herein.

i. When conducting the directory information designation and notice process required by federal law, the school district shall give parents and students notice of the right to refuse to let the district designate specified data about the student as directory information.

ii. The school district shall give annual notice by any means that are reasonably likely to inform the parents and eligible students of:

(1) the types of personally identifiable information regarding students and/or parents that the school district has designated as directory information;

(2) the parent's or eligible student's right to refuse to let the school district designate any or all of those types of information about the student and/or the parent as directory information; and

(3) the period of time in which a parent or eligible student has to notify the school district in writing that he or she does not want any or all of those types of information about the student and/or the parent designated as directory information.

iii. Allow a reasonable period of time after such notice has been given for a parent or eligible student to inform the school district in writing that any or all of the information so designated should not be disclosed without the parent's or eligible student's prior written consent, except as provided in Section 6 of this policy.

iv. A parent or eligible student may not opt out of the directory information disclosures to:

(1) prevent the school district from disclosing or requiring the student to disclose the student's name, ID, or school district e-mail address in a class in which the student is enrolled; or

(2) prevent the school district from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that may be designated as directory information and that has been properly designated by the school district as directory information.

v. The school district shall not disclose or confirm directory information without meeting the written consent requirements contained in Section 6.A. of this policy if a student's social security number or other non-directory information is used alone or in combination with other data elements to identify or help identify the student or the student's records.

d. *Procedure for Obtaining Nondisclosure of Directory Information*

The parent's or eligible student's written notice shall be directed to the responsible authority and shall include the following:

i. Name of the student and/or parent, as appropriate;
ii. Home address;
iii. School presently attended by student;
iv. Parent's legal relationship to student, if applicable; and
v. Specific categories of directory information to be made not public without the parent's or eligible student's prior written consent, which shall only be applicable for that school year.

e. *Duration*

The designation of any information as directory information about a student or parents will remain in effect for the remainder of the school year unless the parent or eligible student provides the written notifications provided herein.

8. **DISCLOSURE OF PRIVATE RECORDS**

a. *Private Records*

For the purposes herein, education records are records which are classified as private data on individuals by state law and which are accessible only to the student who is the subject of the data and the student's parent if the student is not an eligible student. The school district may not disclose private records or

their contents except as summary data, or except as provided in Section 6 of this policy, without the prior written consent of the parent or the eligible student. The school district will use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other party to whom personally identifiable information from education records is disclosed.

b. *Private Records Not Accessible to Parent*
In certain cases, state law intends, and clearly provides, that certain information contained in the education records of the school district pertaining to a student be accessible to the student alone, and to the parent only under special circumstances, if at all.
    i. The responsible authority may deny access to private data by a parent when a minor student who is the subject of that data requests that the responsible authority deny such access. The minor student's request must be submitted in writing setting forth the reasons for denying access to the parent and must be signed by the minor. Upon receipt of such request the responsible authority shall determine if honoring the request to deny the parent access would be in the best interest of the minor data subject. In making this determination the responsible authority shall consider the following factors:
        (1) whether the minor is of sufficient age and maturity to be able to explain the reasons for and understand the consequences of the request to deny access;
        (2) whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm;
        (3) whether there are grounds for believing that the minor data subject's reasons for precluding parental access are reasonably accurate;
        (4) whether the data in question is of such a nature that disclosure of it to the parent may lead to physical or emotional harm to the minor data subject; and
        (5) whether the data concerns medical, dental or other health services provided pursuant to Minnesota Statutes sections 144.341-144.347, in which case the data may be released only if the failure to inform the parent would seriously jeopardize the health of the minor.

c. *Private Records Not Accessible to Student*
Students shall not be entitled to access to private data concerning financial records and statements of the student's parent or any information contained therein.

d. *Military-Connected Youth Identifier*
When a school district updates its enrollment forms in the ordinary course of business, the school district must include a box on the enrollment form to

allow students to self-identify as a military-connected youth. For purposes of this section, a "military-connected youth" means having an immediate family member, including a parent or sibling, who is currently in the armed forces either as a reservist or on active duty or has recently retired from the armed forces. Data collected under this provision is private data on individuals, but summary data may be published by the Department of Education.

9. **DISCLOSURE OF CONFIDENTIAL RECORDS**

a. *Confidential Records*

Confidential records are those records and data contained therein which are made not public by state or federal law, and which are inaccessible to the student and the student's parents or to an eligible student.

b. *Reports Under the Maltreatment of Minors Reporting Act*

Pursuant to Minnesota Statutes Chapter 260E, written copies of reports pertaining to a neglected and/or physically and/or sexually abused child shall be accessible only to the appropriate welfare and law enforcement agencies. In respect to other parties, such data shall be confidential and will not be made available to the parent or the subject individual by the school district. The subject individual, however, may obtain a copy of the report from either the local welfare agency, county sheriff, or the local police department subject to the provisions of Minnesota Statutes Chapter 260E.

Regardless of whether a written report is made under Minnesota Statutes Chapter 260E, as soon as practicable after a school receives information regarding an incident that may constitute maltreatment of a child in a school facility, the school shall inform the parent, legal guardian, or custodian of the child that an incident occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.

c. *Investigative Data*

Data collected by the school district as part of an active investigation undertaken for the purpose of the commencement or defense of pending civil legal action, or that are retained in anticipation of a pending civil legal action are classified as protected nonpublic data in the case of data not on individuals, and confidential data in the case of data on individuals.

i. The school district may make any data classified as protected non-public or confidential pursuant to this subdivision accessible to any person, agency, or the public if the school district determines that such access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest.

ii. A complainant has access to a statement he or she provided to the school district.

iii. Parents or eligible students may have access to investigative data of which the student is the subject, but only to the extent the data is not inextricably intertwined with data about other school district students, school district employees, and/or attorney data as defined in Minnesota Statutes section 13.393.

iv. Once a civil investigation becomes inactive, civil investigative data becomes public unless the release of the data would jeopardize another pending civil legal action, except for those portions of such data that are classified as not public data under state or federal law. Any civil investigative data presented as evidence in court or made part of a court record shall be public. For purposes of this provision, a civil investigation becomes inactive upon the occurrence of any of the following events:

(1) a decision by the school district, or by the chief attorney for the school district, not to pursue the civil legal action. However, such investigation may subsequently become active if the school district or its attorney decides to renew the civil legal action;

(2) the expiration of the time to file a complaint under the statute of limitations or agreement applicable to the civil legal action; or

(3) the exhaustion or expiration of rights of appeal by either party to the civil legal action.

v. A "pending civil legal action" for purposes of this subdivision is defined as including, but not limited to, judicial, administrative, or arbitration proceedings.

d. *Chemical Abuse Records*

To the extent the school district maintains records of the identity, diagnosis, prognosis, or treatment of any student which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, such records are classified as confidential and shall be disclosed only for the purposes and under the circumstances expressly authorized by law.

10. **DISCLOSURE OF SCHOOL RECORDS PRIOR TO EXCLUSION OR EXPULSION HEARING**

At a reasonable time prior to any exclusion or expulsion hearing, the student and the student's parent or guardian or representative shall be given access to all school district records pertaining to the student, including any tests or reports upon which the action proposed by the school district may be based, pursuant to the Minnesota Pupil Fair Dismissal Act, Minnesota Statutes section 121A.40, et seq.

11. **DISCLOSURE OF DATA TO MILITARY RECRUITING OFFICERS AND POST-SECONDARY EDUCATIONAL INSTITUTIONS**

a. The school district will release the names, addresses, ~~electronic mail address (which shall be the electronic mail address provided by the school district if available, that may be released to military recruiting officers only),~~ and home telephone numbers of students in grades 11 and 12 to military recruiting officers and post-secondary educational institutions within sixty (60) days after the date of the request unless a parent or eligible student has refused in writing

to release this data pursuant to Paragraph C. below.

b. Data released to military recruiting officers under this provision:
    i. may be used only for the purpose of providing information to students about military service, state and federal veterans' education benefits, and other career and educational opportunities provided by the military;
    ii. cannot be further disseminated to any other person except personnel of the recruiting services of the armed forces; and
    iii. copying fees shall not be imposed.
c. A parent or eligible student has the right to refuse the release of the name, address, ~~electronic mail address (which shall be the electronic mail address provided by the school district, if available, that may be released to military recruiting officers only),~~ or home telephone number to military recruiting officers and post-secondary educational institutions. To refuse the release of the above information to military recruiting officers and post-secondary educational institutions, a parent or eligible student must notify the responsible authority in writing by October 1 each year. The written request must include the following information:
    i. Name of student and parent, as appropriate;
    ii. Home address;
    iii. Student's grade level;
    iv. School presently attended by student;
    v. Parent's legal relationship to student, if applicable;
    vi. Specific category or categories of information which are not to be released to military recruiting officers and post-secondary educational institutions; and
    vii. Specific category or categories of information which are not to be released to the public, including military recruiting officers and post-secondary educational institutions.
d. Annually, the school district will provide public notice by any means that are reasonably likely to inform the parents and eligible students of their rights to refuse to release the names, addresses, and home phone numbers of students in grades 11 and 12 without prior consent.
e. A parent or eligible student's refusal to release the above information to military recruiting officers and post-secondary educational institutions does not affect the school district's release of directory information to the rest of the public, which includes military recruiting officers and post-secondary educational institutions. In order to make any directory information about a student private, the procedures contained in Section 7 of this policy also must be followed. Accordingly, to the extent the school district has designated the name, address, home phone number, and grade level of students as directory information, absent a request from a parent or eligible student not to release such data, this information will be public data and accessible to members of the public, including military recruiting officers and post-secondary educational institutions.

12. **LIMITS ON REDISCLOSURE**

a. *Redisclosure*

Consistent with the requirements herein, the school district may only disclose personally identifiable information from the education records of a student on the condition that the party to whom the information is to be disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the officers, employees, and agents of any party receiving personally identifiable information under this section may use the information, but only for the purposes for which the disclosure was made.

b. *Redisclosure Not Prohibited*

i. Subdivision A. of this section does not prevent the school district from disclosing personally identifiable information under Section 6 of this policy with the understanding that the party receiving the information may make further disclosures of the information on behalf of the school district provided:

(1) The disclosures meet the requirements of Section 6 of this policy; and

(2) The school district has complied with the record-keeping requirements of Section 13 of this policy.

ii. Subdivision A. of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas or litigation, to disclosures of directory information, to disclosures to a parent or student or to parents of dependent students, or to disclosures concerning sex offenders and other individuals required to register under 42 U.S.C. § 14071. However, the school district must provide the notification required in Section 12.D. of this policy if a redisclosure is made based upon a court order or lawfully issued subpoena.

c. *Classification of Disclosed Data*

The information disclosed shall retain the same classification in the hands of the party receiving it as it had in the hands of the school district.

d. *Notification*

The school district shall inform the party to whom a disclosure is made of the requirements set forth in this section, except for disclosures made pursuant to court orders or lawfully issued subpoenas, disclosure of directory information under Section 7 of this policy, disclosures to a parent or student, or disclosures to parents of a dependent student. In the event that the Family Policy Compliance Office determines that a state or local educational authority, a federal agency headed by an official listed in 34 C.F.R. § 99.31(a)(3), or an authorized representative of a state or local educational authority or a federal agency headed by an official listed in § 99.31(a)(3), or a third party outside of the school district improperly rediscloses personally identifiable information from education records or fails to provide notification required under this section of this policy, the school district may not allow that third party access

to personally identifiable information from education records for at least five (5) years.

13. **RESPONSIBLE AUTHORITY; RECORD SECURITY; AND RECORD KEEPING**
    a. *Responsible Authority*
    The responsible authority shall be responsible for the maintenance and security of student records.
    b. *Record Security*
    The principal of each school subject to the supervision and control of the responsible authority shall be the records manager of the school, and shall have the duty of maintaining and securing the privacy and/or confidentiality of student records.
    c. *Plan for Securing Student Records*
    The building principal shall submit to the responsible authority a written plan for securing students records by September 1 of each school year. The written plan shall contain the following information:
        i. A description of records maintained;
        ii. Titles and addresses of person(s) responsible for the security of student records;
        iii. Location of student records, by category, in the buildings;
        iv. Means of securing student records; and
        v. Procedures for access and disclosure.
    d. *Review of Written Plan for Securing Student Records*
    The responsible authority shall review the plans submitted pursuant to Paragraph C. of this section for compliance with the law, this policy and the various administrative policies of the school district. The responsible authority shall then promulgate a chart incorporating the provisions of Paragraph C. which shall be attached to and become a part of this policy.
    e. *Record Keeping*
        i. The principal shall, for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record, with the education records of the student, that indicates:
            (1) the parties who have requested or received personally identifiable information from the education records of the student;
            (2) the legitimate interests these parties had in requesting or obtaining the information; and
            (3) the names of the state and local educational authorities and federal officials and agencies listed in Section 6.B.iv. of this policy that may make further disclosures of personally identifiable information from the student's education records without consent.
        ii. In the event the school district discloses personally identifiable

information from an education record of a student pursuant to Section 12.B. of this policy, the record of disclosure required under this section shall also include:

(1) the names of the additional parties to which the receiving party may disclose the information on behalf of the school district;
(2) the legitimate interests under Section 6 of this policy which each of the additional parties has in requesting or obtaining the information; and
(3) a copy of the record of further disclosures maintained by a state or local educational authority or federal official or agency listed in Section 6.B.iv. of this policy in accordance with 34 C.F.R. § 99.32 and to whom the school district disclosed information from an education record. The school district shall request a copy of the record of further disclosures from a state or local educational authority or federal official or agency to whom education records were disclosed upon a request from a parent or eligible student to review the record of requests for disclosure.

iii. Section 13.E.i. does not apply to requests by or disclosure to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student, requests by or disclosures to other school officials under Section 6.B.i. of this policy, to requests for disclosures of directory information under Section 7 of this policy, or to a party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or agency has ordered that the existence or the contents of the subpoena or the information provided in response to the subpoena not be disclosed or as directed by an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18. U.S.C. § 2332b(g)(5)(B) or an act of domestic or international terrorism.

iv. The record of requests of disclosures may be inspected by:

(1) the parent of the student or the eligible student;
(2) the school official or his or her assistants who are responsible for the custody of the records; and
(3) the parties authorized by law to audit the record-keeping procedures of the school district.

v. The school district shall record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception:

(1) the articulable and significant threat to the health or safety of a student or other individual that formed the basis for the

disclosure; and

(2) the parties to whom the school district disclosed the information.

vi. The record of requests and disclosures shall be maintained with the education records of the student as long as the school district maintains the student's education records.

14. **RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS**

a. *Parent of a Student, an Eligible Student or the Parent of an Eligible Student Who is Also a Dependent Student*

The school district shall permit the parent of a student, an eligible student, or the parent of an eligible student who is also a dependent student who is or has been in attendance in the school district to inspect or review the education records of the student, except those records which are made confidential by state or federal law or as otherwise provided in Section 8 of this policy.

b. *Response to Request for Access*

The school district shall respond to any request pursuant to Subdivision A. of this section immediately, if possible, or within ten (10) days of the date of the request, excluding Saturdays, Sundays, and legal holidays.

c. *Right to Inspect and Review*

The right to inspect and review education records under Subdivision A. of this section includes:

i. The right to a response from the school district to reasonable requests for explanations and interpretations of records; and

ii. If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the education records, the school district shall provide the parent or eligible student with a copy of the records requested or make other arrangements for the parent or eligible student to inspect and review the requested records.

iii. Nothing in this policy shall be construed as limiting the frequency of inspection of the education records of a student with a disability by the student's parent or guardian or by the student upon the student reaching the age of majority.

d. *Form of Request*

Parents or eligible students shall submit to the school district a written request to inspect education records which identify as precisely as possible the record or records he or she wishes to inspect.

e. *Collection of Student Records*

If a student's education records are maintained in more than one location, the responsible authority may collect copies of the records or the records themselves from the various locations so they may be inspected at one site. However, if the parent or eligible student wishes to inspect these records where they are maintained, the school district shall attempt to accommodate those wishes. The parent or eligible student shall be notified of the time and place where the records may be inspected.

f. *Records Containing Information on More Than One Student*
If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information which pertains to that student.

g. *Authority to Inspect or Review*
The school district may presume that either parent of the student has authority to inspect or review the education records of a student unless the school district has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as marriage dissolution, separation, or custody which provides to the contrary.

h. *Fees for Copies of Records*
    i. The school district shall charge a reasonable fee for providing photocopies or printed copies of records unless printing a copy is the only method to provide for the inspection of data. In determining the amount of the reasonable fee, the school district shall consider the following:
        (1) the cost of materials, including paper, used to provide the copies;
        (2) the cost of the labor required to prepare the copies;
        (3) any schedule of standard copying charges established by the school district in its normal course of operations;
        (4) any special costs necessary to produce such copies from machine based record-keeping systems, including but not limited to computers and microfilm systems; and
        (5) mailing costs.
    ii. If 100 or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used, and, instead, the charge shall be no more than 25 cents for each page copied.
    iii. The cost of providing copies shall be borne by the parent or eligible student.
    iv. The responsible authority, however, may not impose a fee for a copy of an education record made for a parent or eligible student if doing so would effectively prevent or, in the case of a student with a disability, impair the parent or eligible student from exercising their right to inspect or review the student's education records.

15. **REQUEST TO AMEND RECORDS; PROCEDURES TO CHALLENGE DATA**

a. *Request to Amend Education Records*
The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate, misleading, or violates the privacy rights of the student may request that the school district amend those records.
    i. The request shall be in writing, shall identify the item the requestor believes to be inaccurate, misleading, or in violation of the privacy or

other rights of the student, shall state the reason for this belief, and shall specify the correction the requestor wishes the school district to make. The request shall be signed and dated by the requestor.

ii. The school district shall decide whether to amend the education records of the student in accordance with the request within thirty (30) days after receiving the request.

iii. If the school district decides to refuse to amend the education records of the student in accordance with the request, it shall inform the parent of the student or the eligible student of the refusal and advise the parent or eligible student of the right to a hearing under Subdivision B. of this section.

b. *Right to a Hearing*

If the school district refuses to amend the education records of a student, the school district, on request, shall provide an opportunity for a hearing in order to challenge the content of the student's education records to ensure that information in the education records of the student is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. A hearing shall be conducted in accordance with Subdivision C. of this section.

i. If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

ii. If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the school district, or both.

iii. Any statement placed in the education records of the student under Subdivision B. of this section shall:

(1) be maintained by the school district as part of the education records of the student so long as the record or contested portion thereof is maintained by the school district; and

(2) if the education records of the student or the contested portion thereof is disclosed by the school district to any party, the explanation shall also be disclosed to that party.

c. *Conduct of Hearing*

i. The hearing shall be held within a reasonable period of time after the school district has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing.

ii. The hearing may be conducted by any individual, including an

official of the school district who does not have a direct interest in the outcome of the hearing. The school board attorney shall be in attendance to present the school board's position and advise the designated hearing officer on legal and evidentiary matters.

iii. The parent of the student or eligible student shall be afforded a full and fair opportunity for hearing to present evidence relative to the issues raised under Subdivisions A. and B. of this section and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney.

iv. The school district shall make a decision in writing within a reasonable period of time after the conclusion of the hearing. The decision shall be based solely on evidence presented at the hearing and shall include a summary of evidence and reasons for the decision.

d. *Appeal*

The final decision of the designated hearing officer may be appealed in accordance with the applicable provisions of Minnesota Statutes Chapter 14 relating to contested cases.

16. **PROBLEMS ACCESSING DATA**

a. The data practices compliance official is the designated employee to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems.

b. Data practices compliance official means the individual designated by the responsible authority.

c. Any request by an individual with a disability for reasonable modifications of the school district's policies or procedures for purposes of accessing records shall be made to the data practices compliance official.

17. **COMPLAINTS FOR NONCOMPLIANCE WITH FERPA**

a. *Where to File Complaints*

Complaints regarding alleged violations of rights accorded parents and eligible students by FERPA, and the rules promulgated thereunder, shall be submitted in writing to the, U.S. Department of Education, Student Privacy Office, 400 Maryland Avenue S.W., Washington, D.C. 20202.

b. *Content of Complaint*

A complaint filed pursuant to this section must contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA and the rules promulgated thereunder has occurred.

18. **WAIVER**

A parent or eligible student may waive any of his or her rights provided herein pursuant to FERPA. A waiver shall not be valid unless in writing and signed by the parent or eligible student. The school district may not require such a waiver.

19. **ANNUAL NOTIFICATION OF RIGHTS**

a. *Contents of Notice*

The school district shall give parents of students currently in attendance and eligible students currently in attendance annual notice by such means as are

reasonably likely to inform the parents and eligible students of the following:

i. That the parent or eligible student has a right to inspect and review the student's education records and the procedure for inspecting and reviewing education records;
ii. That the parent or eligible student has a right to seek amendment of the student's education records to ensure that those records are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights and the procedure for requesting amendment of records;
iii. That the parent or eligible student has a right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that federal and state law and the regulations promulgated thereunder authorize disclosure without consent;
iv. That the parent or eligible student has a right to file a complaint with the U.S. Department of Education regarding an alleged failure by the school district to comply with the requirements of FERPA and the rules promulgated thereunder;
v. The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest for purposes of disclosing education records to other school officials whom the school district has determined to have legitimate educational interests; and
vi. That the school district forwards education records on request to a school in which a student seeks or intends to enroll or is already enrolled as long as the disclosure is for purposes related to the student's enrollment or transfer and that such records may include suspension and expulsion records pursuant to the federal Every Student Succeeds Act and, if applicable, a student's history of violent behavior.

b. *Notification to Parents of Students Having a Primary Home Language Other Than English*
The school district shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

c. *Notification to Parents or Eligible Students Who are Disabled*
The school district shall provide for the need to effectively notify parents or eligible students identified as disabled.

20. **DESTRUCTION AND RETENTION OF RECORDS**
Destruction and retention of records by the school district shall be controlled by state and federal law.

21. **COPIES OF POLICY**
Copies of this policy may be obtained by parents and eligible students at the superintendent's office.

**Adoption Date:**
8/10/2021

**Revision Dates:**
10/12/2021, 8/8/2023

**Legal References:**
Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act) Minn. Stat. § 13.32, Subd. 5 (Directory Information)Minn. Stat. § 13.393 (Attorneys) Minn. Stat. Ch. 14 (Administrative Procedures Act) Minn. Stat. § 120A.22 (Compulsory Instruction) Minn. Stat. § 121A.40-121A.56 (The Pupil Fair Dismissal Act) Minn. Stat. § 121A.75 (Receipt of Records; Sharing) Minn. Stat. § 127A.852 (Military-Connected Youth Identifier) Minn. Stat. § 144.341-144.347 (Consent of Minors for Health Services) Minn. Stat. Ch. 256B (Medical Assistance for Needy Persons) Minn. Stat. Ch. 256L (MinnesotaCare) Minn. Stat. § 260B.171, subds. 3 and 5 (Disposition Order and Peace Officer Records of Children) Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors) Minn. Stat. § 363A.42 (Public Records; Accessibility) Minn. Rules Parts 1205.0100-1205.2000 (Data Practices) 10 U.S.C. § 503(b) and (c) (Enlistments: Recruiting Campaigns; Compilation of Directory Information) 18 U.S.C. § 2331 (Definitions) 18 U.S.C. § 2332b (Acts of Terrorism Transcending National Boundaries) 20 U.S.C. § 1232g et seq. (Family Educational Rights and Privacy Act) 20 U.S.C. § 6301 et seq. (Every Student Succeeds Act) 20 U.S.C. § 7908 (Armed Forces Recruiting Information) 20 U.S.C. § 7917 (Transfer of School Disciplinary Records) 25 U.S.C. § 5304 (Definitions – Tribal Organization) 26 U.S.C. §§ 151 and 152 (Internal Revenue Code) 42 U.S.C. § 1711 et seq. (Child Nutrition Act) 42 U.S.C. § 1751 et seq. (Richard B. Russell National School Lunch Act) 34 C.F.R. §§ 99.1-99.67 (Family Educational Rights and Privacy) 34 C.F.R. § 300.610-300.627 (Confidentiality of Information) 42 C.F.R. § 2.1 et seq. (Confidentiality of Drug Abuse Patient Records) Gonzaga University v. Doe, 536 U.S. 273 309 (2002)

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

| | **AYE** | **NAY** | **ABSENT** | **ABSTAIN** |
|---|---|---|---|---|
| Abdi | _____ | _____ | _____ | _____ |
| Beachy | _____ | _____ | _____ | _____ |
| Cerrillo | _____ | _____ | _____ | _____ |
| El-Amin | _____ | _____ | _____ | _____ |
| Ellison | _____ | _____ | _____ | _____ |
| Emerick | _____ | _____ | _____ | _____ |
| Feerayarre | _____ | _____ | _____ | _____ |
| Jourdain | _____ | _____ | _____ | _____ |
| Norvell | _____ | _____ | _____ | _____ |

Presiding Officer

_____
Collin Beachy, Chair, Minneapolis Public Schools

Attest

_____
Lori Norvell, Clerk, Minneapolis Public Schools

# Special School District Number 1
# Board of Education Resolution

MINNEAPOLIS
PUBLIC SCHOOLS

Resolution No. 2024-0018
March 12, 2024

**Resolution amending the 2024-2025 school calendar**

**WHEREAS**, General Election Day in 2024 will be held on Tuesday, November 5; and

**WHEREAS**, high voter turnout is anticipated with many offices on the ballot including U.S. President, U.S. Senator, U.S. Representative, State Representative, Judicial seats, School Board seats; and

**WHEREAS**, more than 20 MPS schools serve as polling places; and

**WHEREAS**, it is the recommendation of the Superintendent of Schools that General Election Day 2024 be a non-school day.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 (Minneapolis Public Schools) hereby approves the following changes to the 2024-2025 school calendar:

1. Friday, November 1, 2024, becomes a student contact day
2. Monday, November 4, 2024, becomes the last day of quarter 1
3. Tuesday, November 5, 2024, becomes a non-school day for students and record-keeping day for teachers

ADOPTED this 12th day of March 2024.

Collin Beachy, Chair

Lori Norvell, Clerk

| **RECORD OF BOARD VOTE (2024-0018)** | | | | |
|---|---|---|---|---|
| DIRECTOR | AYE | NAY | ABSTAIN | ABSENT |
| Abdi | | | | |
| El-Amin | | | | |
| Feerayarre | | | | |
| Cerrillo | | | | |
| Norvell | | | | |
| Jourdain | | | | |
| Beachy | | | | |
| Ellison | | | | |
| Emerick | | | | |