



AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the _____ day of _____ in the year _____ (If the parties do not provide a date here, then the term of this Agreement will commence on the date of execution by the Chair of the County Board.)
(In words, indicate day, month and year)

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

County of Hennepin
Property Services Department
A-2208 Government Center
300 South Sixth Street
Minneapolis, MN 55487

and the Architect:
(Name, address and other information)

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

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Attachment 1, Initial Information:

(Complete Attachment 1, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

.2 Substantial Completion date:

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

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

§ 2.3 The Architect shall submit for the Owner's approval prior to entering into this Agreement a Project Organization Chart setting out the Architect's and all consultant personnel and their responsibilities in connection with the performance of services on this Project. (Exhibit F) The Architect shall designate a Project Architect who will represent the Architect and be the primary source of communication between the Architect and the Owner.

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

§ 2.5

(Paragraphs deleted)

INSURANCE

In order to protect itself and those listed under the indemnification provisions as described in Paragraph 8.1 the Architect agrees at all times during the term of this Agreement, and beyond such term when so required, to have and keep in force the following insurance coverages:

§ 2.5.1 Commercial General Liability on an occurrence basis with the following coverages and limits (contractual liability coverage must be included): General Aggregate: \$2,000,000; Products—Completed Operations Aggregate: \$2,000,000; Personal and Advertising Injury: \$1,500,000; Each Occurrence—Combined Bodily Injury and Property Damage: \$1,500,000.

§ 2.5.2 Automobile Liability – Combined single limit each occurrence coverage for bodily injury and property damage covering owned, non-owned, and hired automobiles: \$1,500,000.

§ 2.5.3 Workers' Compensation and Employer's Liability: Workers' Compensation (if the Architect is based outside the State of Minnesota, coverage must apply to Minnesota law): Statutory; Employer's Liability, Bodily injury by: Accident—Each Accident: \$500,000; Disease—Policy Limit: \$500,000; Disease—Each Employee: \$500,000.

§ 2.5.4 Professional Liability—Errors and Omissions - Per Claim: \$1,500,000; Aggregate: \$2,000,000. The Architect shall maintain the professional liability insurance for a period of two years after the completion of the Project.

§ 2.5.5 An umbrella or excess policy over primary liability insurance coverage is an acceptable method to provide the required insurance amounts.

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

(Paragraph deleted)

§ 2.5.7 Copies of policies shall be submitted to the Owner upon written request.

§ 2.5.8 The Architect shall require that consultants engaged or employed by it have and keep in force the same insurance coverages with reasonable prudent limits considering the services to be rendered, and furnish a Certificate of Insurance to the Architect naming it as certificate holder and as an additional insured. The Architect shall be entirely responsible for the adequacy of the insurance and securing the compliance of all such consultants.

§ 2.5.9 The Architect shall not commence work until it has obtained required insurance and filed an acceptable Certificate of Insurance with the Owner. The Certificate shall (a) name Hennepin County as certificate holder and as an additional insured with respect to operations covered under the contract for all liability insurance coverages except Workers' Compensation and Employer's Liability and Professional Liability; and (b) be amended to show

that Hennepin County will receive thirty (30) days' prior written notice in the event of cancellation, nonrenewal, or material change in any described policies.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in Article 3, and not identified elsewhere in this Agreement as Basic Services are Additional Services. . **Phase I services consist of the schematic design phase. Phase II services consist of the design development phase, construction documents phase, bidding or negotiation phase, and construction phase.**

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for adequate periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's written approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution if the Architect objects in writing.

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

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

§ 3.1.7 Owner shall have the right to disapprove any portion of the Architect's services on the Project, including, but not limited to, programming and preliminary design, Schematic Design, Design Development, Construction Documents, Bidding or Negotiation, or Construction Phase Services, and any other design work or documents, on any reasonable basis, including, but not limited to, aesthetics, or because in the Owner's opinion, the Construction Cost of such design is likely to render such work or the Project infeasible. In the event that any phase of the Architect's work is not approved by the Owner, the Architect shall proceed, when requested by the Owner, with revisions to the design work or documents prepared for that phase to attempt to satisfy Owner's objections. These revisions will be made without adjustments to the compensation provided for hereunder, unless revisions are made to drawings previously approved under previous phases, in which case such revision services shall be paid as Additional Services. Should there be substantial revisions to the original program after approval of schematic drawings, which changes substantially increase the scope of design services to be furnished hereunder, Architect shall so notify Owner in writing and receive approval from Owner, before proceeding with revisions necessitated by such changes. No payment of any nature whatsoever, will be made to Architect, for Additional Services, without such written approval by the Owner.

§ 3.1.8 Upon Owner's request at any time during the Design or Construction Phases of this Agreement and as often as so requested, Architect shall promptly provide Owner with progress prints. Owner shall at all times have reasonable access to the files and personnel of Architect relating to the Project in order to answer any reasonable

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questions Owner may have relating to the Architect's performance on the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner to ascertain the requirements of the Project and shall interpret and translate such requirements into a written Architectural Building Program Statement which shall be acceptable to the Owner. The Architect shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations, a written report conforming to the "Requirements for a Capital Project Schematic Design Report" attached hereto as Exhibit A and made a part hereof; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Architect and its consultants shall create all graphic documents for the Project through the use of the electronic media AutoDesk, AutoCad latest release in use by Hennepin County and shall furnish the Owner appropriate prints and CD-ROM during the progress of the Project (See Exhibit E).

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. In accordance with the Hennepin County Sustainable Building Process and the Minnesota Sustainable Building Guide, services requested by the Owner concerning this effort will be Basic Services unless agreed to in advance and authorized in writing per Section 3.1.1 Service incorporated into Basic Services shall include basic research studies, design, document preparation, production selection, meetings, work associated with the Excel Energy Design Assistance Program, and similar services in conjunction with services described in Article 3. The Owner may obtain other environmentally responsible design services under Article 4.

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

§ 3.2.6 The Architect shall submit to the Owner, for the Owner's written approval, an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. The Architect shall not proceed with Phase II services unless authorized in writing by the Owner or the Owner's representative.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's written approval. The Design Development Documents shall

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illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements that are consistent with the Architectural Building Program Statement and the approved Project Budget, and conform to "the Requirements for a Capital Project Design Development Report" attached hereto as Exhibit B and made a part hereof. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, submit to the Owner the updated estimate of the Cost of the Work, advise the Owner of any adjustments to the estimate of the Cost of the Work which shall be within the approved Project Construction Budget established in the Project Budget under Section 6.3, and request the Owner's written approval the Design Development documents and the updated estimate of the Cost of the Work.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the Project Construction Budget, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the bidding and construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's written approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by
(Paragraphs deleted)

preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in a modified AIA Document A201™–2007, General Conditions of the Contract for Construction developed for the Project and other documents included or incorporated in the Contract for Construction.

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

§ 3.6.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become 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 shall 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 shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner in writing (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.6.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

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§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations and evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall be a representation to the Owner that the Contractor is entitled to payment in the amount certified. The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 SUBMITTALS

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

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of (1) determining, through the exercise of professional care, compliance with applicable laws, statutes, ordinances, codes, orders, rules, and regulations; and (2) determining, through the exercise of professional care, that the Work affected by and represented by such submittals is in compliance with the requirements of the Contract Documents. The Architect shall be responsible for determining what aspects of the Work shall be the subject of shop drawings and submittals. The Architect shall not knowingly permit such aspects of the construction work to proceed in the absence of approved shop drawing and submittals. The Architect's action shall 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The

Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Owner or the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data, for the Owner's approval and execution in accordance with the Contract Documents. Preparing drawings, specifications and other documentation and supporting data, evaluating the Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives, is a Basic Service under this Agreement unless otherwise provided in Exhibit D or agreed to in writing by the Owner/Owner's Authorized Representative.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 The Architect and its consultants as a Basic Service shall prepare record documents upon completion of the Work based on marked-up prints, drawings and other data furnished by the Contractor to the Architect, which accurately reflect the changes which have occurred during construction. The documents shall be promptly transmitted to the Owner and shall include three (3) prints of all graphic material, three (3) print copies of the Project Manual and one (1) set of CD-ROM of all CAD documents.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Any additional Services listed in optional Exhibit H are not included in Basic Services but may be required for the Project. The Architect shall provide the Additional Services designated in Exhibit H as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Paragraphs deleted)

(Table deleted)

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

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- ..9 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

§ 4.2.2 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. If the parties do not provide a beginning date on page one (1), then the term of this Agreement will begin on the date of execution by the Chair of the County Board.

(Paragraphs deleted)

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner has designated its Property Services Department Project Manager as its representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands;

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adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project and are not included in Basic Services. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

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

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 A fixed limit of the Cost of the Work shall be established as a condition of this Agreement by the establishment of a Project budget. When such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques at a level of detail satisfactory to the Owner, which when approved by the Owner, shall be incorporated into a Project Budget approved by the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market between the date of submission of the Construction Documents to the Owner and the date on which the Bidding or Negotiation Phase commenced.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

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

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants for this Project, including electronic media, are the property of the Owner, and the Architect may not use these documents for any purpose not relating to the Project without the Owner's consent. The Owner shall be furnished with such reproductions of Drawings, Specifications and other documents as Owner may reasonably require. Upon completion of the Work or any earlier termination of the Agreement, Architect will revise the Drawings to reflect changes made during construction and will promptly furnish the Owner with one complete set of reproducible record prints. Other prints shall be furnished at any other time requested by the Owner. All such CAD electronic data files and reproductions are the property of the Owner which may use them without Architect's permission for any purpose relating to the Project, including, but not limited to, additions, or modifications to, or completion of the Project or submission or distribution of documents by the Owner to meet official regulatory requirements.

§ 7.3 Notwithstanding the terms of Section 7.2, the Architect shall retain full rights to reuse component information contained in the documents in the normal course of business.

ARTICLE 8 CLAIMS AND DISPUTES

(Paragraphs deleted)

§ 8.1 GENERAL

§ 8.1. Architect agrees to defend, indemnify, and hold harmless the County, its elected officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs or expenses including reasonable attorney fees, resulting in whole or in part from any negligent or willful act or omission of the Architect, its consultants, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of said Architect to perform all obligations under this Agreement. Notwithstanding the foregoing, to the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction, as modified by the Owner. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

(Paragraphs deleted)

§ 8.2 MEDIATION

§ 8.2.1 The Owner and Architect may endeavor to resolve claims, disputes and other matters in question between them 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 Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.2 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 shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, and if the parties do not mutually agree to arbitration, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

(Paragraphs deleted)

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 As between the Owner and the Architect and its insurer as to all acts or failures to act by any party, the time limitation for the commencement of any action shall be three (3) years and shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events on the date of issuance of the Final Project Certificate for Payment; or in the event that there is a termination of this Agreement prior to completion of the Project and no Final Project Certificate for Payment is issued, on the date of termination of this Agreement; or on the date of the act or failure to act; or on the date of discovery by the injured party of the act or failure to act; whichever is later. However, in no event may an action be brought more than twelve (12) years after the date of issuance of the Final Project Certificate for Payment, or in the event that there is a termination of this Agreement prior to completion of the Project and no Final Project Certificate for Payment is issued, the date of termination of this Agreement.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The parties may agree that the award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner without cause fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days (or in the case of an epidemic, pandemic, declaration of emergency by the governor, declaration of local emergency, or other order issued by the federal, state, or local unit of government, for more than 60 consecutive days), the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7 In the event of any termination under this Article 9, the Architect consents to Owner's selection of another architect of Owner's choice to assist the Owner in any way in completing the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by Owner and such other architect as Owner may appoint. Any services provided by Architect which are requested by Owner after termination shall be fairly compensated by Owner.

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

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ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, as modified by the Owner.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. The Architect's use of consultants on the Project shall not relieve the Architect of its responsibilities to the Owner under the Contract Documents. Further, the Architect shall be fully responsible for the acts and omissions of its consultants in the performance of services on the Project. Contracts between the Architect and its consultants shall require that the consultants' services are performed in accordance with the terms of the Contract Documents and for the benefit of the Owner.

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

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's information the Architect knows to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. To the extent that the terms in this Section 10.8 are inconsistent with the parties' obligations under Section 12.2, the terms in Section 12.2 shall govern.

§ 10.9 The Architect shall select the means, method, and manner of performing the services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Architect as the agent, representative, or employee of the Owner for any purpose or in any manner whatsoever. The Architect is to be and shall remain an independent consultant with respect to all services performed under this Agreement. Any and all personnel of the Architect or other persons while engaged in the performance of any work or services required by the Architect under this Agreement shall have no contractual relationship with the Owner, and shall not be considered employees of the Owner. Any and all claims that may or might arise under the Unemployment Insurance Law or the Workers' Compensation Act of the State of Minnesota on behalf of said personnel, arising out of employment or alleged employment, including, without limitation, claims of discrimination against the Architect, its officers, agents, contractors, or employees shall in no way be the responsibility of the Owner. The Architect shall defend, indemnify, and hold the Owner, its officers, agents, and employees harmless from any and all such claims irrespective of any determination of any pertinent tribunal,

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agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the Owner, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability, severance pay and PERA.

ARTICLE 11 COMPENSATION

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

(Paragraphs deleted)

for Schematic Design Services (PHASE I); Design Development services, Construction Documents services, Bidding and Award services, Construction Administration services and Record Document services, (PHASE II) rendered by principals, employees and professional consultants shall be based on actual hours worked times the Billable Rates Schedule (Exhibit C) to a maximum "not-to-exceed" total of _____dollars (\$_____.00) and _____dollars (\$_____.00) for County approved reimbursable expenses.

Services associated with Change Orders will be compensated as enumerated in Exhibit D. The Billable Rates Schedule (Exhibit C) is the maximum hourly rates of the Architect's principals, employees, and professional consultants. These maximum hourly rates will not increase for the term of this Agreement. For Basic Services of the Architect's consultant, compensation shall be a multiple of one (1.0) times the actual amounts billed to the Architect for such services.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: the Billable Rates Schedule (Exhibit C) is the maximum hourly rates for the Architect's principals, employees, and professional consultants. These maximum hourly rates will not be increased for Additional Services. For County authorized Additional Services, the Architect's services rendered by its principals, employees, and professional consultants shall be based on actual hours worked times the Billable Rates Schedule (Exhibit C) to the maximum not-to-exceed sum approved by the County for Additional Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows: the Billable Rates Schedule (Exhibit C) is the maximum hourly rates for the Architect's principals, employees, and professional consultants. These maximum hourly rates will not be increased for Additional Services. For County authorized Additional Services, the Architect's services rendered by its principals, employees, and project consultants shall be based on actual hours worked times the Billable Rates Schedule (Exhibit C) to the maximum not-to-exceed sum approved by the County for Additional Services.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect with no markup.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	percent ()	%)
Design Development Phase	percent ()	%)
Construction Documents Phase	percent ()	%)
Bidding or Negotiation Phase	percent ()	%)
Construction Phase	percent ()	%)
<hr/>			
Total Basic Compensation	one hundred	percent (100 %)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

(Paragraphs deleted)

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect’s approved consultants directly related to the Project, as follows:

- .1 Transportation in connection with out-of-town travel authorized in advance by the Owner;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions (except sets of each phase for Owner review), plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect’s Consultant’s expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect’s consultants and , if authorized in advance by the Owner;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures, if authorized in advance by the Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants with no markup.

(Paragraph deleted)

§ 11.8.3 No payment for any of the aforementioned costs incurred by the Architect shall be reimbursed by the Owner if the work has not been previously and specifically authorized by the Owner, in writing. Architect compensation shall not include the expense of computer aided design and drafting equipment time when used in connection with the Project. Payments for all costs and fees incurred under terms of the Agreement shall be made to the Architect in accordance with the provisions hereof. Payment for work performed by approved consultants shall be the responsibility of the Architect.

11.8.4 The following are not reimbursable expenses: general and administrative personnel expense attributable to the general operation of the business. These non-reimbursable expenses would include, but are not limited to, management, secretarial, organization, advertising, entertainment, contributions and donations, attorney fees, labor relations, bad debts, and other business expenses not specifically identifiable and directly related to the Project. In addition, local telephone communications, electronic mail (including attachments), facsimiles, letters (including postage and handling), photocopies, office supplies (drafting paper, stationery, scratch pads, pens and so forth), office equipment (computers, computer software, chairs, tables and so forth), and other expenses not specifically identifiable and directly related to the Project are not reimbursable expenses.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 Payments are due and payable thirty-five (35) days from the date of receipt of the Architect’s invoice.

Amounts unpaid

(Paragraphs deleted)

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thirty-five (35) days after the date of receipt of the invoice shall bear interest in accordance with Minnesota Statutes Section 471.425, subdivision 4. The Architect shall promptly pay any consultants in accordance with Minnesota Statutes Section 471.425, subdivision 4a.

§ 11.10.2 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of the Billable Rates Schedule shall be available to the Owner at mutually convenient times. The Architect agrees that the Owner, the State Auditor, Legislative Auditor, or any of their duly authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any books, documents, papers, records, etc. which are pertinent and involve transactions relating to this Agreement. Such material must be retained for six (6) years by the Architect following the termination of this Agreement. Architect's accounting practices and procedures relevant to this Agreement shall also be subject to examination by any or all of the aforesaid persons as often as and during such time as aforesaid.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 NON-DISCRIMINATION & AFFIRMATIVE ACTION

In accordance with Hennepin County's policies against discrimination, Architect agrees that it shall not exclude any person from full employment rights or participation in or the benefits of any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status; or national origin; and no person who is protected by applicable Federal or State laws against discrimination shall be otherwise subjected to discrimination.

Pursuant to Hennepin County Board Resolution, if this Agreement is for a sum over \$100,000 or is one of several current contracts with Architect totaling more than \$100,000, or is amended to exceed \$100,000, then Architect agrees to abide by the County's non-discrimination and Affirmative Action requirements set forth herein. If Architect has a current approved Affirmative Action Plan (AAP) from another governmental jurisdiction, it shall have met this requirement and Architect agrees to submit evidence of such approval.

If Architect does not have an approved AAP from another jurisdiction, it may be exempt from these requirements for one of the following reasons:

1. Contract is for emergency or life safety (threatening) related purchases;
2. Architect has no facilities and has no more than one product/sales representative operating in Hennepin County;
3. Architect had an average of thirty (30) or fewer full-time/benefit-earning employees during the twelve (12) months preceding the submission of the bid, request for proposal or execution of contract;
4. Pursuant to Hennepin County policy, the County Administrator or his or designee has the authority to grant exemptions when warranted.

If Architect was not granted an exemption by the Hennepin County Purchasing/Contract Services (P/CS) Manager, or designee, Architect agrees to develop and complete an Affirmative Action Plan (AAP) prior to contract execution and agrees to maintain the AAP on file at Architect's facility. Architect also agrees to submit an Initial Workforce Analysis (Form 399) to the Contract Manager within five (5) business days after contract execution. Architect's submission shall be based on the following criteria:

1. If CONTRACTOR is located within the local Standard Metropolitan Statistical Area (SMSA) and with more than thirty (30) full-time/benefit earning employees within the local SMSA, CONTRACTOR shall submit an Initial Workforce Analysis that reflects its local SMSA workforce.
2. If CONTRACTOR is located within the local SMSA and with thirty (30) or fewer full-time/benefit earning employees within the local SMSA, then CONTRACTOR shall submit an Initial Workforce Analysis that reflects its total workforce.

3. If CONTRACTOR is located outside the local SMSA and with more than thirty (30) full-time/benefit earning employees within the local SMSA, then CONTRACTOR shall submit an Initial Workforce Analysis that reflects its local SMSA workforce.

4. If CONTRACTOR is located outside the local SMSA and with thirty (30) or fewer full-time/benefit earning employees within the local SMSA, then CONTRACTOR shall submit an Initial Workforce Analysis that reflects its total workforce.

The Contract Manager will submit the Initial Workforce Analysis to the P/CS Division. If a P/CS Division review determines there is under-representation of women and/or racial minorities based on local Standard Metropolitan Statistical Area (SMSA) labor force availability data, the Architect will be required to identify measures to correct the deficiencies. If the deficiencies are not corrected, Hennepin County will require Architect to demonstrate good faith efforts have been made to correct them. Architect also agrees to keep the AAP current and available for review by Hennepin County during the term of the contract and any extensions thereto. The AAP must include the following elements:

1. EEO Policy Statement
2. Identification of a person responsible for EEO Coordination;
3. Harassment policy statement;
4. Initial Workforce Analysis (Form CC399);
5. Identification of the specific steps Architect will take to achieve or maintain a diverse workforce and ensure non-discrimination;
6. List of recruitment sources; and
7. A plan for dissemination of the Architect's AAP and policy.

Architects who submit evidence of an approved AAP from another jurisdiction and Architects who are required to develop and maintain an AAP on file also agree to submit an Annual Workforce Report (CC400) to the County's P/CS Division.

Architect also agrees that the County shall have access to the AAP and the right to make on-site visits for the purpose of determining compliance with the aforementioned requirements.

If the Architect fails to demonstrate good faith efforts to correct identified deficiencies, and/or fails to submit requested reports or information required by Hennepin County, and/or has engaged in discriminatory practices, Hennepin County may consider this a violation of the agreement and may exercise any and all remedies available to it in law or in equity, including but not limited to cancellation or termination of the contract.

The local Standard Metropolitan Statistical Area is defined as the Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright in Minnesota and Pierce and St. Croix in Wisconsin.

§ 12.2 DATA PRACTICES

The Architect and its consultants agree to abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and all other applicable state and federal laws, rules, regulations, and orders relating to data privacy or confidentiality, and as any of the same may be amended. The architect and its consultants agree to defend, indemnify and hold harmless the County, its officials, officers, agents, employees, and volunteers from any claims resulting from the Architect's and its consultants' unlawful disclosure and/or use of such protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

§ 12.3 PAPER RECYCLING

The Owner encourages the Architect to develop and implement an office paper and newsprint recycling program.

§ 12.4 LEGAL NOTICES

Any notice or demand which must be given or made by a party hereto under the terms of this Agreement or any statute or ordinance shall be in writing and shall be sent registered or certified mail. Notices to the Architect shall be

sent to its address as set forth in the opening paragraph of this Agreement. Notices to Hennepin County shall be directed to the Hennepin County Administrator at the address in the opening paragraph of this Agreement with a copy to the Director of Property Services at Hennepin County Department of Property Services, Government Center, A-2208, 300 South Sixth Street, Minneapolis, MN 55487-0228.

§ 12.5 OTHER BASIC SERVICES

§ 12.5.1 Electronic Media – The Architect and its consultants shall create all graphic documents for the project through the use of the electronic media AutoDesk, AutoCad latest release and shall furnish the Owner appropriate prints and CD-ROM during the progress of the Project . (See Exhibit E).

§ 12.5.2 Record Documents – The Architect and its consultants as a Basic Service shall prepare Record documents upon completion of the Work based on marked-up prints, drawings and other data furnished by the Contractor to the Architect, which accurately reflect the changes which have occurred during construction. The documents shall be promptly transmitted to the Owner and shall included three (3) prints of all graphic material, three (3) print copies of the Project Manual and one (1) set of CD-ROM of all CAD documents.

§ 12.5.3 Change Orders/Change Directives – Preparing drawings, specifications and other documentation and supporting data, evaluating contractors’ proposals and providing other services in connection with change orders and construction change directives is a Basic Service under this Agreement unless otherwise provided in Exhibit D or agreed to in writing by the Owner/Owner’s Authorized Representative.

§ 12.5.4 Civil Engineering – Civil Engineering and other similar services are incorporated into Basic Services as provided in paragraph 2.1 Work under this section is not limited to the site property boundaries.

§ 12.5.5 Sustainable Building – In accordance with the Hennepin County Sustainable Building Process and the Minnesota Sustainable Building Guide, services requested by the Owner concerning this effort will be Basic Services unless agreed to in advance and authorized in writing per Subparagraph 3.1.1 Service incorporated into Basic Services shall include basic research studies, design, document preparation, production selection, meetings, work associated with the Excel Energy Design Assistance Program, and similar services in conjunction with services described in Paragraph 2.3 through 2.6 and as defined in Paragraph 2.1

§ 12.6 SMALL BUSINESS ENTERPRISE PROGRAM

Hennepin County has a commitment to the participation of Small Business Enterprises (SBE’s) in County contracting. The County encourages all County contractors to take step to increase the diversity in their subcontractor solicitation base and to offer subcontracting opportunities to qualified firms including certified Small Business Enterprises, woman-owned business enterprises and minority-owned business enterprises. The County may set subcontracting goals for certified Small Business Enterprise (SBE) participation on contracts which exceed \$100,000 based on opportunity and availability.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. To the extent that any of the terms and conditions in the Architect’s Proposal (Exhibit G-1) are inconsistent with this Agreement, the terms of this Agreement shall govern. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement includes the following documents listed below:

- .1 Exhibit A - Requirements for a Capital Project Schematic Design Report
- .2

(Paragraphs deleted)

Exhibit B - Requirements for a Capital Project Design Development Report

- .3 Exhibit C - Billable Rates Schedule
- .4 Exhibit D - Change Order Compensation Chart
- .5 Exhibit E – Hennepin County CAD Protocol for Facility Projects
- .6 Exhibit F – Organization Chart (included in Exhibit C)
- .7 Exhibit G-1 – Architect’s Proposal
- .8 Exhibit H – Additional Services (if completed)

Init.

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User Notes:

(1845214010)

IN TESTIMONY WHEREOF, The Architect, having signed this Agreement, and the Hennepin County Board of Commissioners having duly approved this Agreement on the day and year first above written, and pursuant to such approval the proper County officials having signed this Agreement, the parties hereto agree to be bound by the provisions herein set forth.

ATTEST:

By:
Deputy/Clerk of the County Board

Date:

APPROVED AS TO FORM AND EXECUTION

By:
Assistant County Attorney

Date:

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

By:
Chair of its County Board

Date:

And:
County Administrator

Date:

And: _____
Deputy County Administrator

Date: _____

RECOMMENDED FOR APPROVAL

By:
Department Director

Date:

ARCHITECT

Name: _____

By: _____
Title

STATE OF MINNESOTA)
) ss.
COUNTY OF)

On this _____ day of _____, _____, before me
appeared _____ (Name of Officer signing) to me personally known, who did say
that he/she is the _____ (title of Officer) of
_____ (Legal Name of Company), the corporation described herein and who
executed the foregoing instrument; and that said instrument was executed on behalf of said corporation by authority
of its Board of Directors or other Governing Body; and he/she acknowledged said instrument to be the free act and
deed of said corporation.

Notary Stamp

Notary Public

My Commission Expires: _____

(Table deleted)