



AIA[®] Document B727[™] – 1988

Standard Form of Agreement Between Owner and Architect for Special Services

AGREEMENT made as of the _____ day of _____ in the year of _____

BY AND BETWEEN

The Owner:
(Name and address)

(Paragraphs deleted) Regents of the University of Minnesota
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, MN 55455

Through its Project Manager

University of Minnesota
400 Donhowe Building
319 15th Avenue SE
Minneapolis, MN 55455
Phone: (612) 625-6262
Fax: (612) 625-0770
E-Mail: @umn.edu

and the Architect/Engineer (the "Architect"):
(Name and address)

(Paragraphs deleted) Firm
Address
City

Contact

Name
Phone:
Fax:
E-Mail:

For the following Project:
(Include detailed description of Project, location, address and scope.)

University of Minnesota Project Name:

University of Minnesota Project No.:

Project Description:

For projects requiring non-design consulting services or predesign services.

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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The Owner and the Architect agree as set forth below.



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ARTICLE 1 ARCHITECT'S SERVICES

(Here list those services to be provided by the Architect under the Terms and Conditions of this Agreement. Note under each service listed the method and means of compensation to be used, if applicable, as provided in Article 8.)

Service to be provided

As described in the Architect's Proposal as accepted by the Owner and attached to and incorporated in this Agreement.

Method and means of compensation

See Section 8.2.

The Architect shall perform its services with a standard of care consistent with the professional skill and care ordinarily provided by sophisticated architects with experience in projects similar to the Project practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services promptly and expeditiously as is consistent with the Architect's standard of care and the orderly progress of the Project.

The Architect's services to be performed under this Agreement shall commence on the date set forth on page 1 of this Agreement and, subject to modification authorized by the Owner, Substantial Completion shall be achieved on or before _____, 200__. Time is of the essence of this Agreement.

The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations and codes and the Owner's Standard and Procedures for Construction and Exterior Design Standards current as of the date of this Agreement as published on the Owner's website (www.cppm.umn.edu).

The Architect shall promptly review information provided by the Owner, correlate its review with information obtained by the Architect from other sources, and promptly report to the Owner errors, inconsistencies or omissions discovered or made known to the Architect.

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Architect shall be entitled to rely on the accuracy and completeness thereof, provided such reliance shall be reasonable based on the Architect's standard of care. The Owner shall have no responsibility for determining which services, information, surveys, and reports are required for the Project and the Architect shall be solely responsible for identifying and requesting such items.

§ 2.2 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Architect shall not take direction from or act upon requests for modifications or changes in its services by anyone other than the Owner's designated representative. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delays in the orderly and sequential progress of the Architect's services.

ARTICLE 3 USE OF ARCHITECT'S DOCUMENTS

§ 3.1 The Owner shall be deemed the owner of the instruments of service prepared by the Architect and the Architect's consultants, including the drawings and specifications, and shall have all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed or this Agreement is terminated before or after the instruments of service are complete. Submission or distribution of instruments of service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights of the Owner.

§ 3.2 Without limiting the generality of Section 3.1, the Owner may use the instruments of service for maintenance, planning, renovations of and additions to the Project, and the Owner may permit qualified professionals to reproduce all or portions of the instruments of service (including the design embodied in those instruments of service) for incorporation into instruments of service to be prepared by such other qualified professionals for renovations of or additions to the Project or other projects for the Owner if those professionals assume all responsibility for the resulting instruments of service and remove all references to the Architect and the Architect's consultants from the resulting instruments of service.

§ 3.2.1 In the event the Owner uses the instruments of service without retaining the author of the instruments of service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the instruments of service under this Section 3.2.1. The terms of this Section 3.2.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.1.

§ 3.3 After termination of this Agreement for cause or convenience, and payment to the Architect of amounts due under this Agreement, if any, the Architect shall deliver to the Owner a complete set for prints and electronic copies of the instruments of service, as completed through the date of termination.

§ 3.4 Notwithstanding anything to the contrary in this Agreement, the Architect and its consultants shall have the right to retain a copy and use the instruments of service for any lawful purpose, including without limitation use of elements of the design on other projects, provided that the Architect shall be responsible for the consequences of such use.

§ 3.5 All electronic copies of drawings that the Architect is required to deliver pursuant to this Agreement shall be in a format acceptable to the Owner.

ARTICLE 4 MEDIATION; LITIGATION

§ 4.1 The Owner and the Architect shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith. If negotiation fails to resolve a Dispute within 30 days after receipt of notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation. The Architect's obligations under this Section 4.1 shall survive completion of services or termination of this Agreement.

§ 4.2 The Owner and Architect shall endeavor to resolve Disputes between them by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the American Arbitration Association 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 but, in such event, mediation shall proceed in advance of litigation 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.

(Paragraphs deleted)

§ 4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Hennepin County, Minnesota. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.4 If the parties do not resolve a Dispute through mediation pursuant to this Article 4, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in Hennepin County, Minnesota.

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 This Agreement may be terminated by either party upon not less than 30 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.2 If the Owner fails to make payment when due the Architect for services and expenses in accordance with this Agreement, the Architect may, upon 30 days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within 30 days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services due to the Owner's failure to make payment, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by the Architect was otherwise not warranted.

§ 5.3 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. The Architect shall not be entitled to anticipated profits.

§ 5.4 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.

(Paragraphs deleted)

ARTICLE 6 MISCELLANEOUS PROVISIONS

§ 6.1 This Agreement shall be governed by and interpreted under the internal laws of the State of Minnesota without giving effect to conflict of law principles. All suits, actions, and causes of action relating to the construction, validity, performance or enforcement of this Agreement shall be in the courts of record in the State of Minnesota and venue shall be in Hennepin County.

§ 6.2 The Owner and the Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other party arising out of or related to this Agreement within the time period specified by applicable law.

(Paragraphs deleted)

§ 6.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither Owner nor the Architect shall assign this Agreement without the written consent of the other.

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

§ 6.5 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.

§ 6.6 Unless otherwise required in this Agreement, the Architect and Architect's consultants 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 site.

§ 6.7 Project Management Information System

§ 6.7.1 The Owner may, at its sole option, direct the Architect and/or other Project participants to utilize the Owner's internet-based Project Management Software. The functionality of this

software may include, but is not limited to, the processing of Plan Reviews, Purchase Orders, Change Orders, Invoices, Payment Applications, Requests for Information, and Document Management related to the Project.

§ 6.7.2 If the Owner chooses to utilize its Project Management Software for the Project, the Owner will provide and manage a login license for the Architect's designated Project representative(s) at no cost to the Architect. The Owner will provide initial software training to the Architect's designated Project representative(s) at no cost to the Architect. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of this software by the Architect.

ARTICLE 7 PAYMENTS TO THE ARCHITECT

§ 7.1 DIRECT PERSONNEL EXPENSE

§ 7.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

§ 7.2 REIMBURSABLE EXPENSES

§ 7.2.1 Reimbursable Expenses are in addition to the Architect's compensation for services performed and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project for:

- .1 Owner-authorized out-of-town travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to employees of the Owner, as posted at <http://process.umn.edu/groups/ppd/documents/policy/Travel.cfm>;
- .2 reasonable long-distance telephone services, dedicated data and communication services, teleconferences, Project web sites and extranets;
- .3 Owner requested printing, reproductions, and standard form documents;
- .4 reasonable postage, handling and delivery of documents for bidding purposes, Owner review(s), or other specially mandated or required review(s) or as otherwise requested by the Owner;
- .5 renderings and models requested by the Owner;
- .6 Owner authorized special computer studies, videos or cds; or Owner authorized special reports required by any unique characteristic of the Project; and
- .7 reproduction of record drawings (if applicable to the Project).

(Paragraphs deleted)

§ 7.3 PAYMENTS ON ACCOUNT OF THE ARCHITECT'S SERVICES

§ 7.3.1 Intentionally Deleted

§ 7.3.2 Intentionally Deleted

(Paragraph deleted)

§ 7.4 ARCHITECT'S ACCOUNTING RECORDS

§ 7.4.1 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative pursuant to Section 9.1.

ARTICLE 8 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

§ 8.1 Intentionally Deleted

(Paragraph deleted)

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§ 8.2 COMPENSATION FOR THE ARCHITECT'S SERVICES, as described in Article 1, Architect's Services, shall be computed as follows:
(Insert basis of compensation, including stipulated sums multiples or percentages, and identify the services to which particular methods of compensation apply, if necessary.)

<< Chose One Option>>

Using the Architect's hourly rate schedule attached hereto, which includes Direct Personnel Expenses, provided such total shall not exceed \$_____.

On the basis of a lump-sum in the amount of \$_____.

§ 8.3 FOR REIMBURSABLE EXPENSES, as described in Article 7, a multiple of one (1) times the actual expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project, without mark-up.

§ 8.4 Payments are due and payable 30 days after receipt of the Architect's invoice.

(Paragraphs deleted)

§ 8.5 IF THE SCOPE of the Project or of the Architect's services is changed materially, the amounts of compensation shall be equitably adjusted.

§ 8.6 The not-to-exceed compensation amount for Reimbursable Expenses <<[is included in the compensation established in Section 8.2] or shall be (\$_____), subject to the limitations of Section 7.2.1.>>.

ARTICLE 9 OTHER CONDITIONS

§ 9.1 AUDIT RIGHTS.

§ 9.1.1 The Owner and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Architect's information, materials, records, or data relating to this Project, including but not limited to, accounting records, written policies and procedures, subcontract files (including subcontracts, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating Work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records"). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where the Architect's Records have been generated from computerized data, the Architect agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

§ 9.1.2 The Architect shall preserve the Records for a period of 12 years after final payment or for such longer period as required by law, provided, however, that if a Claim is asserted during said 12-year period, the Architect shall retain all such Records until the Claim has been resolved.

§ 9.1.3 The Architect shall require all payees to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the Architect and the payee.

§ 9.1.4 The Owner and its accountants, auditors, and agents shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article, and the Owner

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and its accountants, auditors and agents agree to perform all of their work in that space and not elsewhere in the Architect's offices, to not interact with Architect's employees, and to not otherwise unreasonably interfere or disrupt the work of the Architect's employees.

§ 9.1.5 If an Audit discloses overpricing or overcharges (of any nature) by the Architect to the Owner in excess of 1% of the total contract billings, in addition to repayment or credit for overcharges, the reasonable, actual cost of the Audit shall be reimbursed to the Owner by the Architect. Any adjustments and/or payments that must be made as a result of any Audit shall be made within a reasonable time not to exceed 90 days from presentation of the Owner's findings to the Architect.

§ 9.2 **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.** The Architect shall not discriminate against employees, consultants, or applicants for employment or consulting, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, veteran status, disability, sexual orientation, age, or membership in any other protected class under state, federal or local law (the "Protected Classes"). The Architect shall ensure that its consultants do not discriminate against employees or applicants for employment because of membership in any Protected Class. The Architect agrees to put in conspicuous places, available to employees and applicants for employment, notices to be furnished by the Owner setting forth the nondiscrimination provisions of this Section 9.2. If the compensation expected to be paid to the Architect exceeds \$50,000, the Architect shall designate an Equal Employment Opportunity Officer, who shall have authority and responsibility for implementation of equal opportunity employment and affirmative action programs under this Agreement. The Architect shall submit to the Owner for approval a written copy of its program or certificate of compliance from the State of Minnesota within 14 days after execution of this Agreement. In all solicitations and advertisements for employees and consultants placed by or on behalf of the Architect, the Architect shall state that all qualified applicants will receive consideration for employment without regard to membership in a Protected Class. The Architect shall furnish to the Owner, if requested, information and periodic reports in a format to be reasonably agreed upon, to substantiate its compliance with the requirements of the policy set forth in this Section 9.2. The Architect shall permit access to its books, records, and accounts by the Owner for the purpose of ascertaining compliance with these provisions. Noncompliance with any equal employment provision of this Agreement shall be a material default under this Agreement, which the Architect shall cure within 14 calendar days of notice of default from the Owner. In addition to other remedies available, failure to cure shall entitle the Owner to liquidated damages in an amount equal to 5% of the Architect's fee as set forth in Section 8.2. The Owner and the Architect acknowledge and agree that the actual extent of Owner losses the Owner will incur as a result of the failure of the Architect to comply with the equal employment provisions of this Agreement cannot reasonably be determined as of the date of this Agreement and the liquidated damages amount is reasonable under the circumstances and not a penalty. The Architect shall take action necessary to enforce these provisions.

§ 9.3 **PROHIBITION AGAINST GRATUITIES; ACCEPTANCE AGAINST ADVANTAGE.** The Architect acknowledges having read and understood Minnesota Statutes, Section 15.43, which is incorporated herein by reference as if fully set forth herein. The Architect agrees that its participation with any employee of the Owner in acts that violate Minnesota Statutes, Section 15.43 constitutes a material default under this Agreement entitling the Owner to terminate for cause, pursuant to Section 5.1. By executing this Agreement, the Architect certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially from this Agreement.

§ 9.4 **VENDOR PERFORMANCE PROGRAM.** The Owner has a Design and Construction Vendor Performance Program (the "VP Program") applicable to providers of design and construction-related services and materials. The Architect agrees to exhaust all rights and remedies afforded the Architect under the terms of the VP Program as a condition precedent to making any claim against the Owner arising out of or relating to the Owner's use or application of

the VP Program. The Architect acknowledges its receipt of a copy of the current VP Program which is available as "Document 00665" at www.cppm.umn.edu/bidding.html.

§ 9.5 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT AND SMALL BUSINESS PROGRAM. The Architect acknowledges that the Owner has a policy to establish and implement its Targeted Business, Urban Community Economic Development, and Small Business Program (the "TBE Programs"). A copy of this policy is available at [http://wwwl.umn.edu/regents/policies/administrative/Targeted Business.html](http://wwwl.umn.edu/regents/policies/administrative/Targeted_Business.html). The Architect acknowledges that it has a copy of this policy. As a material consideration for the Owner entering into this Agreement, the Architect agrees to satisfy this policy and to provide information regarding its actions intended to satisfy this policy that may be requested by the Owner. The Architect agrees that it will fulfill the commitments with regard to the TBE Programs set forth in the Architect's Proposal and upon the Owner's request, provide substantiation of compliance.

§ 9.6 MINNESOTA GOVERNMENT DATA PRACTICES ACT. The Architect shall comply with the Minnesota Governmental Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") with regard to any information the Owner provides to the Architect that is subject to the Act. The Architect shall keep confidential any information it receives from the Owner or any other source during the course of its performance that concerns the personal, financial, or other affairs of the Owner, its Board of Regents, officers, employees or students. The Architect shall return any documents or other information the Owner has supplied to the Architect in connection with the services rendered under this Agreement, within 15 days after the completion of services, or upon request by the Owner, whichever occurs first.

§ 9.7 CONFIDENTIAL INFORMATION. The Architect shall not use or disclose and shall not permit others to use or disclose Confidential Information without the Owner's prior written approval. The Architect may disclose the Confidential Information only to those employees that have a need to know the Confidential Information for the Project and only upon the following conditions: (1) the employees have each agreed in writing to the Architect's obligations under this Section, and (2) the Architect has provided the original written agreement to the Owner.

§ 9.7.1 "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Architect and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that the Architect can show (by contemporaneous written records) that the Architect had it in its possession before beginning the Project and before disclosure by the Owner.

§ 9.7.2 The Architect agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section 9.7. The Architect agrees that the Owner may obtain an injunction to prevent or enjoin any breach of this obligations of this Section 9.7. The Architect's obligations under this Section 9.7 shall survive completion of services or termination of this Agreement.

§ 9.7.3 The Architect and its employees, agents, contractors and consultants shall not make or otherwise disseminate any public announcements or press release with respect to the Project without the Owner's prior written approval.

§ 9.8 PAYMENT OF ARCHITECT'S CONSULTANTS. In the event the Architect engages any consultant to perform any of the services under this Agreement, the Architect shall pay any such consultant within ten days (or such shorter period as required by law) of the Architect's receipt of payment from the Owner for undisputed services provided by the consultant. The Architect shall pay interest of 1.5% per month (or any part of a month) to the consultant on an undisputed amount not paid on time to the consultant. The minimum monthly interest penalty for an unpaid

balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Architect shall pay the actual penalty due to the consultant. See Minnesota Statutes, Section 137.36.

§ **9.9 AMERICANS WITH DISABILITIES ACT GUIDELINES.** The Architect shall design the Project in compliance with the current understanding and interpretation of the Americans with Disabilities Act Guidelines. Appendix A to the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 through 12213 and with adherence to any governing bodies having jurisdiction regarding access to the Project by the physically handicapped.

§ **9.10 NOTICES.** All notices shall be sent to the Project Manager and designed representative of the party receiving notice, at the address, email address, or facsimile number provided by that party. Notices personally delivered or sent by electronic mail or facsimile before 4:00 p.m. CST on a Business Day shall be deemed delivered on such date; if personally delivered or transmitted by e-mail or facsimile after 4:00 p.m. CST, delivery shall be deemed effected as of the next Business Day, provided any delivery by e-mail or facsimile must be confirmed by a hard copy mailed on the date of transmittal. Notices sent by registered or certified mail shall be deemed to be given on the second Business Day from the date the same are deposited in said mail. Notices given in any other manner shall be deemed given on the date actually received.

§ **9.11 BUSINESS DAY.** "Business Day" as used herein shall mean and refer to any day that the University of Minnesota is open to the general public. In the event that the deadline for a party's performance hereunder falls on a day other than a Business Day, then such deadline shall be deemed extended to the next Business Day thereafter.

§ **9.12 INTELLECTUAL PROPERTY.** The Architect warrants that any design, materials or products provided or produced by it or its consultants utilized in any manner in the performance of its services will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any intellectual property infringement claim by any third party against the Owner, the Architect, at its expense, shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless the Owner against any loss, cost, expense, or liability (including attorneys' fees) arising out of such claim, whether or not such claim is successful against the Owner. If any such claim occurs, or in the Architect's opinion is likely to occur, the Architect shall either procure for the Owner the right to continue using the design material or product that is the subject of the claim or replace or modify the design materials or products. This remedy is in addition to, and shall not be exclusive of, other remedies provided by law. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

§ **9.13 INDEMNITY.** To the extent allowed by law, the Architect shall indemnify, defend (with counsel acceptable to the Owner), and hold harmless the Owner from and against all damages, losses and claims, including but not limited to attorneys' fees, arising in whole or in part out of the negligence, error, omission, or failure of performance by the Architect, its employees, agents, or consultants, or the breach of this Agreement or any implied covenants deemed to be applied thereto by the Architect or its employees, agents or consultants. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

§ **9.14 INSURANCE.** The Architect shall, at its sole cost and expense, maintain the following insurance for the duration of this Agreement and for a period of at least three years after the date of Substantial Completion or earlier termination of this Agreement, with insurers having an A.M. Best rating of A-VII or better and licensed to do business in the State of Minnesota:

- .1 General Liability (including contractual liability)
 - \$2,000,000 General Aggregate (per project)
 - \$2,000,000 Products/Completed Operations
 - \$2,000,000 Each Occurrence

\$2,000,000 Personal/Advertising Injury (any one person or organization)
\$ 50,000 Fire Damage (any one fire)
\$ 5,000 Medical Payments (any one person or occurrence)

.2 Automobile Liability

\$2,000,000 Bodily Injury/Property Damage (per accident or loss for owned, non-owned and hired vehicles)
Statutory Personal Injury Protection

.3 Worker's Compensation

Statutory coverage limits for Minnesota and All States Endorsement

.4 Professional Liability

\$1,000,000 per claim and \$2,000,000 aggregate

.5 Employer's Liability

\$50,000 Each Accident
\$500,000 Disease - Policy limit
\$500,000 Disease - Each Employee

.6 Valuable Papers. The Architect must purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed and electronic documents on an all-risk basis in an amount sufficient to cover the cost of research, re-creation or reconstruction of valuable papers or records related to the Project.

.7 Umbrella Liability. The Architect may use an umbrella or excess policy to supplement or provide any of the policy limits listed above. The umbrella or excess policy shall be follow-form of the required coverage or provide, at a minimum, the coverage available on the required policies.

§ 9.14.1 The Architect shall require each structural, mechanical, electrical, civil and other professional engineer, landscape architect, and other design consultant (if any) to maintain professional liability insurance with a \$1,000,000 per claim coverage limit and a \$2,000,000 aggregate coverage limit.

§ 9.14.2 The Architect shall deliver to the Owner certificates, or at the request of the Owner certified copies, of the policies evidencing the insurance required by Sections 9.14 and 9.14.1, before the commencement of the Architect's services and from time to time at the request of the Owner for as long as the Architect is required to maintain such insurance. Each policy shall (1) require the insurer to notify the Owner at least 30 days before any cancellation, nonrenewal or material modification of the policy, and (2) waive all rights of subrogation against the Owner, the Contractor, and their officers, employees, contractors and subcontractors. Each policy, except professional liability and worker's compensation Schedule A, shall name the Owner as an additional insured, with such coverage being primary and non-contributory with respect to any insurance carried by the Owner (including any self-insurance by the Owner).

§ 9.14.3 The professional liability insurance for the Architect and each engineer and other consultant may be written on a claims-made basis with a retroactive date of no later than the date that the Architect, engineer, or consultant first performed services in regard to the Project.

This Agreement entered into as of the day and year first written on page 1 of this Agreement.

OWNER

Regents of the University of Minnesota

ARCHITECT

(Signature)

(Printed name and title)

Date: _____

(Signature)

(Printed name and title)

Date: _____



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Additions and Deletions Report for **AIA[®] Document B727[™] – 1988**

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PAGE 1

AGREEMENT made as of the day of in the year of

~~BETWEEN~~ the BY AND BETWEEN

The Owner:
(Name, legal status (Name and address))

~~and the Architect:~~
(Name, legal status) Regents of the University of Minnesota
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, MN 55455

Through its Project Manager

University of Minnesota
400 Donhowe Building
319 15th Avenue SE
Minneapolis, MN 55455
Phone: (612) 62
Fax: (612) 625-0770
E-Mail: @umn.edu

~~and the Architect/Engineer (the "Architect"):~~
(Name and address)

~~for Firm~~
Address
City

Contact

Name
Phone:
Fax:

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E-Mail:

For the following Project:

(Include detailed description of Project, location, address and scope.)

University of Minnesota Project Name:

University of Minnesota Project No.:

Project Description:

For projects requiring non-design consulting services or predesign services.

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PAGE 3

As described in the Architect's Proposal as See Section 8.2. accepted by the Owner and attached to and incorporated in this Agreement.

The Architect shall perform its services with a standard of care consistent with the professional skill and care ordinarily provided by sophisticated architects with experience in projects similar to the Project practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services promptly and expeditiously as is consistent with the Architect's standard of care and the orderly progress of the Project.

The Architect's services to be performed under this Agreement shall commence on the date set forth on page 1 of this Agreement and, subject to modification authorized by the Owner, Substantial Completion shall be achieved on or before _____, 200__. Time is of the essence of this Agreement.

The Architect shall perform its services in compliance with all applicable ordinances, statutes, regulations and codes and the Owner's Standard and Procedures for Construction and Exterior Design Standards current as of the date of this Agreement as published on the Owner's website (www.cppm.umn.edu).

The Architect shall promptly review information provided by the Owner, correlate its review with information obtained by the Architect from other sources, and promptly report to the Owner errors, inconsistencies or omissions discovered or made known to the Architect.

§ 2.1 The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Architect shall be entitled to rely on the accuracy and completeness thereof, provided such reliance shall be reasonable based on the Architect's standard of care. The Owner shall have no responsibility for determining which services, information, surveys, and reports are required for the Project and the Architect shall be solely responsible for identifying and requesting such items.

§ 2.2 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Architect shall not take direction from or act upon requests for modifications or changes in its services by anyone other than the Owner's designated representative. The Owner or such authorized representative shall render decisions in a timely

manner pertaining to documents submitted by the Architect in order to avoid unreasonable ~~delay~~ delays in the orderly and sequential progress of the Architect's services.

...

§ 3.1 The documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain. Owner shall be deemed the owner of the instruments of service prepared by the Architect and the Architect's consultants, including the drawings and specifications, and shall have all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's documents for the Owner's information, reference and use in connection with the Project. The Architect's documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect. copyrights, whether or not the Project is completed or this Agreement is terminated before or after the instruments of service are complete. Submission or distribution of instruments of service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights of the Owner.

§ 3.2 Without limiting the generality of Section 3.1, the Owner may use the instruments of service for maintenance, planning, renovations of and additions to the Project, and the Owner may permit qualified professionals to reproduce all or portions of the instruments of service (including the design embodied in those instruments of service) for incorporation into instruments of service to be prepared by such other qualified professionals for renovations of or additions to the Project or other projects for the Owner if those professionals assume all responsibility for the resulting instruments of service and remove all references to the Architect and the Architect's consultants from the resulting instruments of service.

§ 3.2.1 In the event the Owner uses the instruments of service without retaining the author of the instruments of service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the instruments of service under this Section 3.2.1. The terms of this Section 3.2.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.1.

§ 3.3 After termination of this Agreement for cause or convenience, and payment to the Architect of amounts due under this Agreement, if any, the Architect shall deliver to the Owner a complete set for prints and electronic copies of the instruments of service, as completed through the date of termination.

§ 3.4 Notwithstanding anything to the contrary in this Agreement, the Architect and its consultants shall have the right to retain a copy and use the instruments of service for any lawful purpose, including without limitation use of elements of the design on other projects, provided that the Architect shall be responsible for the consequences of such use.

§ 3.5 All electronic copies of drawings that the Architect is required to deliver pursuant to this Agreement shall be in a format acceptable to the Owner.

ARTICLE 4 MEDIATION; LITIGATION

§ 4.1 The Owner and the Architect shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith. If negotiation fails to resolve a Dispute within 30 days after receipt of notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition

precedent to litigation. The Architect's obligations under this Section 4.1 shall survive completion of services or termination of this Agreement.

§ 4.2 The Owner and Architect shall endeavor to resolve Disputes between them by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the American Arbitration Association 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 but, in such event, mediation shall proceed in advance of litigation 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.

ARTICLE 4 — ARBITRATION

~~§ 4.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.~~

~~§ 4.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.~~

~~§ 4.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Architect and any other person or entity sought to be joined. 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 or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Hennepin County, Minnesota. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 4.4 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. If the parties do not resolve a Dispute through mediation pursuant to this Article 4, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in Hennepin County, Minnesota.~~

PAGE 5

~~§ 5.1 This Agreement may be terminated by either party upon not less than ~~seven~~ 30 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.~~

~~§ 5.2 If the Owner fails to make payment when due the Architect for services and expenses, expenses in accordance with this Agreement, the Architect may, upon ~~seven~~ 30 days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within ~~seven~~ 30 days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of ~~services,~~ services due to the Owner's failure to make payment, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of ~~services,~~ services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by the Architect was otherwise not warranted.~~

§ 5.3 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 and all Termination Expenses as defined in Section 5.4 due. The Architect shall not be entitled to anticipated profits.

§ 5.4 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.

§ 5.4 Termination Expenses shall be computed as a percentage of the compensation earned to the time of termination, as follows:

- .1 For services provided on the basis of a multiple of Direct Personnel Expense, 20 percent of the total Direct Personnel Expense incurred to the time of termination; and
- .2 For services provided on the basis of a stipulated sum, 10 percent of the stipulated sum earned to the time of termination.

§ 6.1 This Agreement shall be governed by and interpreted under the internal laws of the State of Minnesota without giving effect to conflict of law principles. All suits, actions, and causes of action relating to the construction, validity, performance or enforcement of this Agreement shall be in the courts of record in the State of Minnesota and venue shall be in Hennepin County.

§ 6.2 The Owner and the Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other party arising out of or related to this Agreement within the time period specified by applicable law.

§ 6.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

§ 6.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date payment is due the Architect pursuant to Section 8.4.

§ 6.3 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor agents, successors, assigns and legal representatives to this Agreement. Neither Owner nor the Architect shall assign this Agreement without the written consent of the other.

...

§ 6.6 Unless otherwise provided required in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances of, or exposure of persons to, hazardous materials or toxic substances in any form at the site.

§ 6.7 Project Management Information System

§ 6.7.1 The Owner may, at its sole option, direct the Architect and/or other Project participants to utilize the Owner's internet-based Project Management Software. The functionality of this software may include, but is not limited to, the processing of Plan Reviews, Purchase Orders, Change Orders, Invoices, Payment Applications, Requests for Information, and Document Management related to the Project.

§ 6.7.2 If the Owner chooses to utilize its Project Management Software for the Project, the Owner will provide and manage a login license for the Architect's designated Project representative(s) at no cost to the Architect. The Owner will provide initial software training to the Architect's designated Project representative(s) at no cost to the Architect. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of this software by the Architect.

PAGE 6

§ 7.2.1 Reimbursable Expenses are in addition to the Architect's compensation for services performed and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project for:

- .1 Owner-authorized out-of-town travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to employees of the Owner, as posted at <http://process.umn.edu/groups/ppd/documents/policy/Travel.cfm>;
- .2 reasonable long-distance telephone services, dedicated data and communication services, teleconferences, Project web sites and extranets;
- .3 Owner requested printing, reproductions, and standard form documents;
- .4 reasonable postage, handling and delivery of documents for bidding purposes, Owner review(s), or other specially mandated or required review(s) or as otherwise requested by the Owner;
- .5 renderings and models requested by the Owner;
- .6 Owner authorized special computer studies, videos or cds; or Owner authorized special reports required by any unique characteristic of the Project; and
- .7 reproduction of record drawings (if applicable to the Project).

~~§ 7.2.4 Reimbursable Expenses are in addition to the Architect's compensation and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project for:~~

- ~~.1 expense of transportation and living expenses in connection with out of town travel authorized by the Owner;~~
- ~~.2 long distance communications;~~
- ~~.3 fees paid for securing approval of authorities having jurisdiction over the Project;~~
- ~~.4 reproductions;~~
- ~~.5 postage and handling of documents;~~
- ~~.6 expense of overtime work requiring higher than regular rates, if authorized by the Owner;~~
- ~~.7 renderings and models requested by the Owner;~~
- ~~.8 expense of additional coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants; and~~
- ~~.9 Expense of computer aided design and drafting equipment time when used in connection with the Project.~~

~~§ 7.3.1 Payments on account of the Architect's services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or as otherwise provided in this Agreement.~~**Intentionally Deleted**

§ 7.3.2 Intentionally Deleted

~~§ 7.3.2 An initial payment as set forth in Section 8.1 is the minimum payment under this Agreement.~~

§ 7.4.1 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative ~~at mutually convenient times.~~ pursuant to Section 9.1.

...

§ 8.1 Intentionally Deleted

~~§ 8.1 AN INITIAL PAYMENT OF (\$) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.~~

PAGE 7

<< Chose One Option >>

Using the Architect's hourly rate schedule attached hereto, which includes Direct Personnel Expenses, provided such total shall not exceed \$_____.

On the basis of a lump-sum in the amount of \$_____.

~~§ 8.3 FOR REIMBURSABLE EXPENSES, as described in Article 7, and any other items included in Article 9 as Reimbursable Expenses, a multiple of () times the~~ a multiple of one (1) times the actual expenses incurred by the Architect, the Architect's employees and consultants ~~in the interest of the Project.~~ directly related to the Project, without mark-up.

§ 8.4 Payments are due and payable 30 days after receipt of the Architect's invoice.

~~§ 8.4 Payments are due and payable () days from the date of the Architect's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Architect.~~

(Insert rate of interest agreed upon.)

—%

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding other requirements such as written disclosures or waivers.)

§ 8.6 The not-to-exceed compensation amount for Reimbursable Expenses <<[is included in the compensation established in Section 8.2] or shall be (\$_____), subject to the limitations of Section 7.2.1.>>.

...

§ 9.1 AUDIT RIGHTS.

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

include information, materials, records or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where the Architect's Records have been generated from computerized data, the Architect agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

§ 9.1.2 The Architect shall preserve the Records for a period of 12 years after final payment or for such longer period as required by law, provided, however, that if a Claim is asserted during said 12-year period, the Architect shall retain all such Records until the Claim has been resolved.

§ 9.1.3 The Architect shall require all payees to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the Architect and the payee.

§ 9.1.4 The Owner and its accountants, auditors, and agents shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article, and the Owner and its accountants, auditors and agents agree to perform all of their work in that space and not elsewhere in the Architect's offices, to not interact with Architect's employees, and to not otherwise unreasonably interfere or disrupt the work of the Architect's employees.

§ 9.1.5 If an Audit discloses overpricing or overcharges (of any nature) by the Architect to the Owner in excess of 1% of the total contract billings, in addition to repayment or credit for overcharges, the reasonable, actual cost of the Audit shall be reimbursed to the Owner by the Architect. Any adjustments and/or payments that must be made as a result of any Audit shall be made within a reasonable time not to exceed 90 days from presentation of the Owner's findings to the Architect.

§ 9.2 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. The Architect shall not discriminate against employees, consultants, or applicants for employment or consulting, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, veteran status, disability, sexual orientation, age, or membership in any other protected class under state, federal or local law (the "Protected Classes"). The Architect shall ensure that its consultants do not discriminate against employees or applicants for employment because of membership in any Protected Class. The Architect agrees to put in conspicuous places, available to employees and applicants for employment, notices to be furnished by the Owner setting forth the nondiscrimination provisions of this Section 9.2. If the compensation expected to be paid to the Architect exceeds \$50,000, the Architect shall designate an Equal Employment Opportunity Officer, who shall have authority and responsibility for implementation of equal opportunity employment and affirmative action programs under this Agreement. The Architect shall submit to the Owner for approval a written copy of its program or certificate of compliance from the State of Minnesota within 14 days after execution of this Agreement. In all solicitations and advertisements for employees and consultants placed by or on behalf of the Architect, the Architect shall state that all qualified applicants will receive consideration for employment without regard to membership in a Protected Class. The Architect shall furnish to the Owner, if requested, information and periodic reports in a format to be reasonably agreed upon, to substantiate its compliance with the requirements of the policy set forth in this Section 9.2. The Architect shall permit access to its books, records, and accounts by the Owner for the purpose of ascertaining compliance with these provisions. Noncompliance with any equal employment provision of this Agreement shall be a material default under this Agreement, which the Architect shall cure within 14 calendar days of notice of default from the Owner. In addition to other remedies available, failure to cure shall entitle the Owner to liquidated damages in an amount equal to 5% of the Architect's fee as set forth in Section 8.2. The Owner and the Architect acknowledge and agree that the actual extent of Owner losses the Owner will incur as a result of the failure of the Architect to comply with the equal employment provisions of this Agreement cannot reasonably be determined as of the date of this Agreement and the liquidated damages amount is reasonable under the circumstances and not a penalty. The Architect shall take action necessary to enforce these provisions.

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§ 9.3 PROHIBITION AGAINST GRATUITIES; ACCEPTANCE AGAINST ADVANTAGE. The Architect acknowledges having read and understood Minnesota Statutes, Section 15.43, which is incorporated herein by reference as if fully set forth herein. The Architect agrees that its participation with any employee of the Owner in acts that violate Minnesota Statutes, Section 15.43 constitutes a material default under this Agreement entitling the Owner to terminate for cause, pursuant to Section 5.1. By executing this Agreement, the Architect certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially from this Agreement.

§ 9.4 VENDOR PERFORMANCE PROGRAM. The Owner has a Design and Construction Vendor Performance Program (the "VP Program") applicable to providers of design and construction-related services and materials. The Architect agrees to exhaust all rights and remedies afforded the Architect under the terms of the VP Program as a condition precedent to making any claim against the Owner arising out of or relating to the Owner's use or application of the VP Program. The Architect acknowledges its receipt of a copy of the current VP Program which is available as "Document 00665" at www.cppm.umn.edu/bidding.html.

§ 9.5 TARGETED BUSINESS, URBAN COMMUNITY ECONOMIC DEVELOPMENT AND SMALL BUSINESS PROGRAM. The Architect acknowledges that the Owner has a policy to establish and implement its Targeted Business, Urban Community Economic Development, and Small Business Program (the "TBE Programs"). A copy of this policy is available at [http://wwwl.umn.edu/regents/policies/administrative/Targeted Business.html](http://wwwl.umn.edu/regents/policies/administrative/Targeted_Business.html). The Architect acknowledges that it has a copy of this policy. As a material consideration for the Owner entering into this Agreement, the Architect agrees to satisfy this policy and to provide information regarding its actions intended to satisfy this policy that may be requested by the Owner. The Architect agrees that it will fulfill the commitments with regard to the TBE Programs set forth in the Architect's Proposal and upon the Owner's request, provide substantiation of compliance.

§ 9.6 MINNESOTA GOVERNMENT DATA PRACTICES ACT. The Architect shall comply with the Minnesota Governmental Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") with regard to any information the Owner provides to the Architect that is subject to the Act. The Architect shall keep confidential any information it receives from the Owner or any other source during the course of its performance that concerns the personal, financial, or other affairs of the Owner, its Board of Regents, officers, employees or students. The Architect shall return any documents or other information the Owner has supplied to the Architect in connection with the services rendered under this Agreement, within 15 days after the completion of services, or upon request by the Owner, whichever occurs first.

§ 9.7 CONFIDENTIAL INFORMATION. The Architect shall not use or disclose and shall not permit others to use or disclose Confidential Information without the Owner's prior written approval. The Architect may disclose the Confidential Information only to those employees that have a need to know the Confidential Information for the Project and only upon the following conditions: (1) the employees have each agreed in writing to the Architect's obligations under this Section, and (2) the Architect has provided the original written agreement to the Owner.

§ 9.7.1 "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Architect and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that the Architect can show (by contemporaneous written records) that the Architect had it in its possession before beginning the Project and before disclosure by the Owner.

§ 9.7.2 The Architect agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section 9.7. The

Architect agrees that the Owner may obtain an injunction to prevent or enjoin any breach of this obligations of this Section 9.7. The Architect's obligations under this Section 9.7 shall survive completion of services or termination of this Agreement.

§ 9.7.3 The Architect and its employees, agents, contractors and consultants shall not make or otherwise disseminate any public announcements or press release with respect to the Project without the Owner's prior written approval.

§ 9.8 PAYMENT OF ARCHITECT'S CONSULTANTS. In the event the Architect engages any consultant to perform any of the services under this Agreement, the Architect shall pay any such consultant within ten days (or such shorter period as required by law) of the Architect's receipt of payment from the Owner for undisputed services provided by the consultant. The Architect shall pay interest of 1.5% per month (or any part of a month) to the consultant on an undisputed amount not paid on time to the consultant. The minimum monthly interest penalty for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Architect shall pay the actual penalty due to the consultant. See Minnesota Statutes, Section 137.36.

§ 9.9 AMERICANS WITH DISABILITIES ACT GUIDELINES. The Architect shall design the Project in compliance with the current understanding and interpretation of the Americans with Disabilities Act Guidelines. Appendix A to the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 through 12213 and with adherence to any governing bodies having jurisdiction regarding access to the Project by the physically handicapped.

§ 9.10 NOTICES. All notices shall be sent to the Project Manager and designed representative of the party receiving notice, at the address, email address, or facsimile number provided by that party. Notices personally delivered or sent by electronic mail or facsimile before 4:00 p.m. CST on a Business Day shall be deemed delivered on such date; if personally delivered or transmitted by e-mail or facsimile after 4:00 p.m. CST, delivery shall be deemed effected as of the next Business Day, provided any delivery by e-mail or facsimile must be confirmed by a hard copy mailed on the date of transmittal. Notices sent by registered or certified mail shall be deemed to be given on the second Business Day from the date the same are deposited in said mail. Notices given in any other manner shall be deemed given on the date actually received.

§ 9.11 BUSINESS DAY. "Business Day" as used herein shall mean and refer to any day that the University of Minnesota is open to the general public. In the event that the deadline for a party's performance hereunder falls on a day other than a Business Day, then such deadline shall be deemed extended to the next Business Day thereafter.

§ 9.12 INTELLECTUAL PROPERTY. The Architect warrants that any design, materials or products provided or produced by it or its consultants utilized in any manner in the performance of its services will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any intellectual property infringement claim by any third party against the Owner, the Architect, at its expense, shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless the Owner against any loss, cost, expense, or liability (including attorneys' fees) arising out of such claim, whether or not such claim is successful against the Owner. If any such claim occurs, or in the Architect's opinion is likely to occur, the Architect shall either procure for the Owner the right to continue using the design material or product that is the subject of the claim or replace or modify the design materials or products. This remedy is in addition to, and shall not be exclusive of, other remedies provided by law. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

§ 9.13 INDEMNITY. To the extent allowed by law, the Architect shall indemnify, defend (with counsel acceptable to the Owner), and hold harmless the Owner from and against all damages, losses and claims, including but not limited to attorneys' fees, arising in whole or in part out of the negligence, error, omission, or failure of performance by the Architect, its employees, agents,

or consultants, or the breach of this Agreement or any implied covenants deemed to be applied thereto by the Architect or its employees, agents or consultants. The Architect's obligations under this Section shall survive completion of services or termination of this Agreement.

§ 9.14 INSURANCE. The Architect shall, at its sole cost and expense, maintain the following insurance for the duration of this Agreement and for a period of at least three years after the date of Substantial Completion or earlier termination of this Agreement, with insurers having an A.M. Best rating of A-VII or better and licensed to do business in the State of Minnesota:

.1 General Liability (including contractual liability)

\$2,000,000 General Aggregate (per project)
\$2,000,000 Products/Completed Operations
\$2,000,000 Each Occurrence
\$2,000,000 Personal/Advertising Injury (any one person or organization)
\$ 50,000 Fire Damage (any one fire)
\$ 5,000 Medical Payments (any one person or occurrence)

.2 Automobile Liability

\$2,000,000 Bodily Injury/Property Damage (per accident or loss for owned, non-owned and hired vehicles)
Statutory Personal Injury Protection

.3 Worker's Compensation

Statutory coverage limits for Minnesota and All States Endorsement

.4 Professional Liability

\$1,000,000 per claim and \$2,000,000 aggregate

.5 Employer's Liability

\$50,000 Each Accident
\$500,000 Disease - Policy limit
\$500,000 Disease - Each Employee

.6 Valuable Papers. The Architect must purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed and electronic documents on an all-risk basis in an amount sufficient to cover the cost of research, re-creation or reconstruction of valuable papers or records related to the Project.

.7 Umbrella Liability. The Architect may use an umbrella or excess policy to supplement or provide any of the policy limits listed above. The umbrella or excess policy shall be follow-form of the required coverage or provide, at a minimum, the coverage available on the required policies.

§ 9.14.1 The Architect shall require each structural, mechanical, electrical, civil and other professional engineer, landscape architect, and other design consultant (if any) to maintain professional liability insurance with a \$1,000,000 per claim coverage limit and a \$2,000,000 aggregate coverage limit.

§ 9.14.2 The Architect shall deliver to the Owner certificates, or at the request of the Owner certified copies, of the policies evidencing the insurance required by Sections 9.14 and 9.14.1.

before the commencement of the Architect's services and from time to time at the request of the Owner for as long as the Architect is required to maintain such insurance. Each policy shall (1) require the insurer to notify the Owner at least 30 days before any cancellation, nonrenewal or material modification of the policy, and (2) waive all rights of subrogation against the Owner, the Contractor, and their officers, employees, contractors and subcontractors. Each policy, except professional liability and worker's compensation Schedule A, shall name the Owner as an additional insured, with such coverage being primary and non-contributory with respect to any insurance carried by the Owner (including any self-insurance by the Owner).

§ 9.14.3 The professional liability insurance for the Architect and each engineer and other consultant may be written on a claims-made basis with a retroactive date of no later than the date that the Architect, engineer, or consultant first performed services in regard to the Project.

This Agreement entered into as of the day and year first written ~~above~~ on page 1 of this Agreement.

OWNER

ARCHITECT

Regents of the University of Minnesota

PAGE 12

Date: _____

Date: _____

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Nick Deffley, 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 09:46:03 on 08/27/2009 under Order No. 1000391465_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B727™ – 1988 - Standard Form of Agreement Between Owner and Architect for Special Services, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)