

Minnesota Sports Facilities Authority in Conjunction with the Minnesota Vikings LLC
People's Stadium
Construction Manager Request for Proposals
Minneapolis, MN 55415

ADDENDUM NO. ONE

December 19, 2012

This Addendum forms a part of the contract Documents and modifies the request for proposal dated December 6, 2012. **Acknowledge receipt of this Addendum in your proposal cover letter.** Failure to do so may subject Proposer to disqualification. The Proposer is responsible for determination of proposal requirements affected by Addendum items.

This Addendum consists the following:

1. Construction Services Agreement and General Conditions

Note:

1. Due to numerous requests by proposers the Authority and Team are discussing a new proposal schedule to provide adequate time for preparation of proposals. That schedule is expected to be provided as part of Addendum No. 2 (expected release date 12/21/2012).

**CONSTRUCTION SERVICES AGREEMENT
BETWEEN THE MINNESOTA SPORTS
FACILITIES AUTHORITY
AND THE CONSTRUCTION MANAGER**

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**CONSTRUCTION SERVICES AGREEMENT
BETWEEN THE MINNESOTA SPORTS
FACILITIES AUTHORITY
AND THE CONSTRUCTION MANAGER**

CONSTRUCTION SERVICES AGREEMENT

THIS CONSTRUCTION SERVICES AGREEMENT (“Construction Services Agreement”) is made as of the [INSERT] day of January in the year of 2013.

BY AND BETWEEN

The AUTHORITY:

MINNESOTA SPORTS FACILITIES AUTHORITY
900 South Fifth Street
Minneapolis, MN 55415

and the

CONSTRUCTION MANAGER: [INSERT]

For the following **PROJECT:** The Stadium and Stadium Infrastructure at the Stadium Site.

The Architecture / Engineering Services for the Project shall be provided by HKS, Inc. (and is defined as the “**Architect**” for the purposes hereof).

TERMS AND CONDITIONS
OF
CONSTRUCTION SERVICES AGREEMENT

RECITALS

WHEREAS, the owner of the Project is the Minnesota Sports Facilities Authority, a public body, corporate and politic and political subdivision of the State of Minnesota (and is defined as the “**Authority**” for purposes hereof), or its assigns or designees; and

WHEREAS, the Authority was established to construct, finance, and operate a multi-purpose stadium and related infrastructure as a venue for the National Football League and a broad range of other civic, community, athletic, educational, cultural, and commercial activities in the City of Minneapolis, Minnesota, and desires to develop certain real estate as a public project described herein as the Stadium Site; and

WHEREAS, the Authority and Minnesota Vikings Football, LLC, a Delaware limited liability company authorized and doing business in the State of Minnesota (and is defined as the “**Team**” for purposes hereof) have entered into a Preliminary Development Agreement (“**PDA**”); and

WHEREAS, the Authority and the Team will enter into a Development Agreement (“**DA**”); and

WHEREAS, the Project is being developed pursuant to 2012 Minnesota Laws, Chapter 299, as enacted or hereafter amended or supplemented, and including any successor law, providing for, among other things, the construction, financing, operation, and long-term use of a multi-purpose stadium and related infrastructure as a venue for the National Football League and a broad range of other civic, community, athletic, educational, cultural, and commercial activities in the City of Minneapolis, Minnesota (and is defined as the “**Act**” for purposes hereof); and

WHEREAS, the Act provides that the Authority shall serve as the Stadium Developer except that, prior to the time the Authority enters into a construction contract with the Construction Manager that contains a certified maximum price and completion date, and at the request of the Team, the Authority may authorize the Team to serve as Stadium Developer for the management of the construction of the Stadium and Stadium Infrastructure (collectively defined as the “**Project**” for purposes hereof and as the term “Project” is further clarified in the definitions that are attached to **Exhibit 6** of this Construction Services Agreement); and

WHEREAS, the Authority has engaged the services of Hammes Company Sports Development, Inc., as its representative to assist in the planning, development, design, and construction of the Project. The Team has engaged the services of ICON Venue Group, LLC, as its representative to assist in the planning, development, design, and construction of the Project; and

WHEREAS, the Team and the Authority desire to use a collaborative process to reach consensus on key elements of the Project design, as is detailed in the PDA and as will be more fully described in the DA; and

WHEREAS, to effectuate the collaborative process, the Authority and the Team have established the Stadium Design and Construction Group (and is defined as the “**SDC Group**” for purposes hereof) to manage the design and oversee construction of the Project as required by the Act and as further specified in the PDA or DA; and

WHEREAS, the SDC Group, subject to certain approvals of the Authority and the Team as established in the PDA, shall direct the Construction Manager under this Construction Services Agreement during the Pre-Construction Phase or until otherwise directed by the Authority pursuant to the PDA or the DA; and

WHEREAS, whenever the Authority's approval, direction, or decision is required pursuant to this Construction Services Agreement during the Pre-Construction Phase, the Construction Manager acknowledges and agrees that such approval shall be provided by the SDC Group as specified in the PDA or the DA or until otherwise directed by the Authority pursuant to the PDA or the DA; and

WHEREAS, Construction Manager acknowledges and agrees that whenever the Authority's written authorization is required under this Construction Services Agreement, such written authorization shall be signed and delivered by the Authority to the Construction Manager, including execution of the Construction Services Agreement; and

WHEREAS, the Authority desires to retain the Construction Manager to provide Pre-Construction Phase Services and Construction Phase Services and accomplish the Work pursuant to the terms and conditions of this Construction Services Agreement; and

WHEREAS, the Construction Manager's Work for the Project shall be provided by Persons lawfully licensed to perform such Work in the State of Minnesota; and

WHEREAS, the Construction Manager acknowledges and agrees that it shall be required to negotiate and implement a Project Labor Agreement as approved by the Authority; and

WHEREAS, the Architect shall prepare Design Documents from which the Construction Manager shall prepare estimates of Construction Cost and a guaranteed maximum price ("**GMP**") for the Work established between the Authority and Construction Manager, so that the GMP will not exceed that portion of the Fixed Construction Budget established for the Work; and

WHEREAS, the Construction Manager acknowledges that the Authority has a not-to-exceed Fixed Construction Budget for the complete construction and equipping of the Project and that there is a Construction Schedule including a Substantial Completion Date by which the Construction Manager must achieve Substantial Completion; and

WHEREAS, the Construction Manager represents that it will complete the Work for an amount not to exceed the certified GMP and achieve Substantial Completion at or before the certified completion date as set forth in the Construction Schedule; and

WHEREAS, the Construction Manager acknowledges and agrees that the intent of this Construction Services Agreement is to provide all aspects of the Work in order to provide the Authority with a Project that is of high quality, fully functional and operation-ready on the Date of Substantial Completion in strict accordance with the GMP and the Construction Schedule, and the Construction Manager acknowledges and agrees to this primary intent while recognizing that the Contract Documents will continue to be developed, including completion and coordination of any and all Drawings, Specifications, Shop Drawings, Product Data, Samples, Bulletins, or answers to Requests for Information prepared by the Architect and/or other member of the Project Team; and

WHEREAS, the Construction Manager is strictly responsible to coordinate the Work with the work of all members of the Project Team, including the coordination of any and all Shop Drawings, Product Data, Samples, or Requests for Information to the Architect in order to meet the Authority's objectives as stated herein; and

WHEREAS, the Construction Manager acknowledges and agrees that the Authority, at its sole discretion, may elect to convert this Construction Services Agreement to a design/build delivery system on terms mutually agreeable to the Authority and Construction Manager; and

WHEREAS, the Parties desire to set forth the terms of their agreements in this Construction Services Agreement to be effective as of the date set forth above.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Construction Manager and the Authority hereby agree as follows:

[THIS SPACE LEFT INTENTIONALLY BLANK]

ARTICLE 1

GENERAL PROVISIONS

1.1 Basic Definitions

- 1.1.1 The above Recitals are incorporated herein.
- 1.1.2 The definitions set forth in Exhibit 1 hereof and in Appendix A of the General Conditions included as Exhibit 6 hereto shall define certain terms in this Construction Services Agreement.
- 1.1.3 Exhibits 1 through 13 are attached to and are incorporated as part of this Construction Services Agreement for all purposes, and their terms apply to and obligate the Construction Manager as if fully set forth herein.

1.2 Execution, Correlation and Intent

- 1.2.1 The Construction Manager and Authority shall sign this Construction Services Agreement in not less than triplicate.
- 1.2.2 It is the intent of the Construction Manager and Authority that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents, but reasonably inferable from the Contract Documents, will be included as part of the Work. Words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.2.3 The Construction Manager will review the Design Documents as they are being produced, and provide comments based on constructability, Value Engineering, and known inconsistencies, ambiguities, or errors, especially before it provides a Construction Management Plan containing its GMP Proposal as provided in Exhibit 3 of the Construction Services Agreement; as a result, any inconsistencies among and between the Contract Documents shall be governed by the most strict or stringent requirements included therein and as determined by the Authority.
- 1.2.4 The Construction Manager accepts a fiduciary duty of trust and confidence toward the Authority created by this Construction Services Agreement, and covenants with the Authority to furnish the Construction Manager's skill and judgment and to cooperate with the Project Participants in furthering the interests of the Authority. Consistent with its Standard of Care, the Construction Manager shall furnish construction administration and management services and use the Construction Manager's expertise and best efforts to perform the Work in an expeditious and economical manner and in furtherance of the interests of the Authority.
- 1.2.5 The Construction Manager hereby acknowledges and agrees that it is the intent of Construction Manager and Authority under this Construction Services Agreement that Construction Manager shall fully advise and consult with the Authority, the Team, their representatives, and the Architect from the early stages of design through completion of construction with respect to, and shall be solely responsible for, all matters related to the Pre-Construction Phase Services and Construction Phase Services necessary for completion of the Work in strict accordance with the Contract Documents, within the GMP, and by the Date of Substantial Completion in the Construction Schedule. The Construction Manager shall lead the efforts of the Project Team in determining the most expeditious Construction

Schedule for completion of the Work, the most appropriate construction means and methods for assembly and constructability of the Project, the best materials to fulfill the performance objectives of the Authority consistent with the Authority's Program, and all other matters related to the Work. The Construction Manager is responsible for continuous and thorough review of the Contract Documents for clarity, consistency, and completeness in order to ensure that Construction Costs will not exceed the Fixed Construction Budget.

1.3 Construction Manager's Authorized Representatives

The Construction Manager's representative authorized to act on behalf of the Construction Manager with respect to the Project is [INSERT], or his/her successor designated in writing and approved by the Authority.

1.3.1 Key Personnel

The Construction Manager's Key Personnel and Project staffing in connection with the Project are identified in Exhibit 5 hereto. Key Personnel may not be removed from the Project, be reassigned or be assigned to additional projects so long as they remain in the Construction Manager's employ. If Key Personnel die, become disabled or otherwise leave the employ of the Construction Manager prior to completion of the Work, the Construction Manager shall provide a replacement with another individual of comparable education and experience, who shall likewise be subject to the Authority's written approval. The Construction Manager shall provide staffing for the Project at not less than the minimum levels set forth on Exhibit 5. The Authority shall have the right to approve the Construction Manager's appointment of the Construction Manager's supervisors, with such approval not to be unreasonably withheld. The Authority shall have, in its sole discretion, the right to request the dismissal of the Construction Manager's supervisors or any other personnel employed by the Construction Manager or its Subcontractors of any tier and shall have approval rights over any such replacement supervisors with such approval not to be unreasonably withheld. The Construction Manager shall immediately comply with any such requests by the Authority.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

2.1 Basic Services and Responsibilities

2.1.1 Construction Services

- .1 The Construction Manager shall provide all services, work, labor, materials, equipment and other necessary payments as are required to complete the Work as set forth in the Contract Documents, including any and all Pre-Construction Phase Services and Construction Phase Services (collectively, “**Basic Services**”) as are set forth on Exhibit 1. The Work is intended to be inclusive of all construction, services, work, labor, materials, and equipment required by, or reasonably inferable from, the Construction Documents necessary to complete the Work pursuant to the Construction Schedule and within the GMP.
- .2 The Work is more completely described in the Contract Documents, including all of the Work as defined in the Exhibits hereto.
- .3 The Work consists of those services performed by the Construction Manager, its employees, Subcontractors, Suppliers, and Sub-subcontractors of all tiers. The Construction Manager is solely and strictly responsible for the performance of all Persons performing the Work, including Subcontractors, Suppliers, and Sub-subcontractors of all tiers. It is the responsibility of the Construction Manager to ensure that all Subcontractors and Suppliers, including Sub-subcontractors at every tier, that is performing any portion of the Work are familiar with all the terms and conditions of this Construction Services Agreement and the Contract Documents and that their performance is in accordance therewith.
- .4 It shall be the duty of the Construction Manager to review, direct, and supervise construction of the Work. The Construction Manager is responsible to complete the Work in strict accordance with the Contract Documents. In the event the Construction Manager undertakes construction activities, the Construction Manager shall continually inspect its Work. The Construction Manager shall cooperate in all respects with the Design Services of the Architect or the services or work of any other Project Participant involved in the Work or Project. The Construction Manager shall cooperate in all respects with other Persons associated with the Authority, which may include lenders, any lender’s inspecting architect or representative, insurers, the Team, sponsors, the National Football League, television broadcast networks, radio broadcasters, cellular/distributed antennae providers, and Governmental Authorities.
- .5 The Construction Manager shall be solely responsible for the means, methods, techniques, and sequences it chooses to perform the Work and shall ensure that when finished, the Work complies completely with the Contract Documents. No inspection or approval by others, including the Authority, Team, Architect, SDC Group, and/or any Project Participant or Governmental Authority, shall relieve the Construction Manager from this responsibility. Pursuant to its Standard of Care, the Construction Manager shall supervise and direct the Work efficiently, shall at all times enforce good order among Persons under its control, and shall ensure that all Persons under its control have the skills necessary to perform the portion of the Work assigned to them. The Construction Manager shall be responsible for the safe and complete performance of all of its Subcontractors, Suppliers, and Sub-Subcontractors of every tier.

- .6 Without diminishing the Construction Manager's obligation to meet all requirements of this Construction Services Agreement, the Construction Manager agrees that its four most important requirements are as follows:
- .1 to achieve Substantial Completion of all or part of the Work on or before the dates set forth in the Construction Schedule,
 - .2 to minimize the Construction Costs and to absolutely complete the Work within the GMP,
 - .3 to complete the Work with the quality required by the Contract Documents, and
 - .4 to maintain the highest standards of safety on the Project Site.

2.2 Additional Services

- 2.2.1 Other than the Basic Services and responsibilities set forth in **Paragraph 2.1** hereof, the Construction Manager shall not be required to provide any Additional Services, except when ordered to do so in writing.
- 2.2.2 Neither the Authority nor Construction Manager anticipates any Additional Services at the time this Construction Services Agreement is executed.

2.3 Authorization to Proceed

- 2.3.1 From and after the date hereof, the Construction Manager is authorized to perform only those services that involve Pre-Construction Phase Services required to develop the Contract Documents for the purpose of establishing a Construction Management Plan between the Authority and Construction Manager. The Construction Manager acknowledges and agrees that the Construction Manager shall not, without written Notice to Proceed from the Authority, proceed with any Construction Phase Services. Unless otherwise directed by the Authority pursuant to **Subparagraph 2.3.2** herein, the Authority will only issue a Notice to Proceed with the Construction Phase Services upon the Authority's receipt and written approval of the Construction Manager's Construction Management Plan, including its GMP Proposal and Construction Schedule. The Construction Manager will proceed with the Construction Phase Services only after the Authority has provided written acceptance of the Construction Manager's Construction Management Plan, which shall be determined to be acceptable in the sole and absolute discretion of the Authority and Team.
- 2.3.2 Notwithstanding the requirements in **Subparagraph 2.3.1** herein, the Authority and Construction Manager expressly acknowledge and agree that the Authority may provide the Construction Manager with a limited Notice to Proceed in writing for specific portions of the Work to expedite the construction of the Project. Any part of the Work that the Construction Manager is authorized to perform before acceptance of the Construction Manager's Construction Management Plan shall be performed pursuant to this Construction Services Agreement and such other terms and conditions as may be reasonably required by the Authority. If the Authority accepts the Construction Manager's Construction Management Plan, any earlier portions of the Work performed by the Construction Manager will become part of the GMP. Notwithstanding the issuance of any form of Notice to Proceed or under **Subparagraphs 2.3.1** or **2.3.2** hereof, no work on the Stadium foundations may be commenced prior to the publication of the Authority's determination that the final environmental impact statement ("EIS") for the Project is adequate.

2.3.3 The Construction Manager expressly acknowledges and agrees that the Authority may, at any time during the Pre-Construction Phase, terminate development of the Project or this Construction Services Agreement for cause or the convenience of the Authority pursuant to **Paragraph 16.3** hereof. The Authority does not guarantee, represent, or warrant that the Construction Manager will be retained to perform the Construction Phase Services, and the Construction Manager agrees and acknowledges that it shall have no rights, Claims, or entitlement of any kind to perform or receive any compensation or payment of any kind on account of the Construction Phase Services unless and until the Construction Manager is provided a written Notice to Proceed authorizing the Construction Manager to proceed with all or part of the Construction Phase Services. Issuance of a written Notice to Proceed shall be an express condition to the Authority's obligations regarding the Construction Phase Services portion of this Construction Services Agreement.

ARTICLE 3

AUTHORITY'S RESPONSIBILITIES

- 3.1** The Authority shall have the obligations and responsibilities set forth herein and in the Contract Documents. Whenever the Contract Documents require action by a member of the Project Team, the Authority shall endeavor to use reasonable efforts to require the Architect, Construction Manager, or any other member of the Project Team to take appropriate action and to render decisions in a timely manner, although failure by the Authority to do so shall not absolve the Architect, Construction Manager, or other member of the Project Team from their respective responsibilities to take such actions and to render decisions in a timely manner in accordance with the Contract Documents. The Construction Manager is responsible to cooperate and coordinate with the Architect to complete the Work and assist the Architect in its completion of the Design Services.
- 3.2** The Authority shall examine documents submitted by the Architect, Construction Manager, or other Project Team members and shall promptly render decisions pertaining to such documents.
- 3.3** Notwithstanding any other provision in the Contract Documents, during the Pre-Construction Phase, whenever the Authority or the Architect are required or permitted under the Contract Documents to review any submittal by the Construction Manager or to observe any of the Work or to give any approval, consent, decision, or certificate, or exercise any discretion or make any determination, the Authority shall act with the approval of the SDC Group as provided in the PDA or DA. The Authority and Team shall designate the Person that during the Construction Phase will provide approvals, consents, decisions, determinations, or any other act on behalf of the Authority under this Construction Services Agreement, and the Authority will advise the Construction Manager of the identity of that Person at or before the time the Construction Manager will commence its Construction Phase Services.
- 3.4** The Authority shall fully cooperate with the Construction Manager who shall be responsible to secure all building and other permits, licenses, and inspections necessary for the Work. The Authority shall pay directly for primary building permit(s) (including Mechanical and Electrical permits) which costs shall be included in the Fixed Construction Budget and shall be deemed a Project Cost. Construction Manager shall include in the GMP costs for all other fees such as permits, licenses, and inspections, which shall be reimbursed as a Cost of the Work.
- 3.5** The Authority shall furnish the services of land surveyors or geotechnical engineers and other consultants for subsoil, air, and water conditions or other professional consultants when such services are deemed necessary by the Architect to properly carry out the Work and only after such services are agreed to by the Authority. The Authority shall furnish, directly or through the Architect, structural, mechanical, chemical, geotechnical, and other laboratory or on-site testing and reports to the extent set forth in the Contract Documents and as required by Applicable Laws.
- 3.6** Other than as stated in **Paragraph 3.5** above, the Authority or Indemnitees shall not be responsible for inspecting or testing any portion or progress of the Work, and any tests or inspections performed by the Authority, the Architect, an Indemnitee, or any of their agents shall not relieve the Construction Manager from properly and timely performing the Work.
- 3.7** [RESERVED]
- 3.8** [RESERVED]
- 3.9** The Authority and Indemnitees are relying on the Construction Manager's GMP, which contains a Construction Manager Contingency as provided in **Exhibit 3** to the Construction Services Agreement, to pay for all Costs of the Work and Claims for additional payment (other than for approved Contract Revisions) above the GMP. The Act permits the Authority to enter into this

Construction Services Agreement only on the express condition that the Construction Manager is responsible for cost overruns above the GMP; as a result, the Construction Manager shall be responsible to pay all Costs of the Work and other costs or expenses that exceed the GMP. The Authority and Indemnitees are not, and shall in no event be, responsible or liable to any member of the Project Team including the Construction Manager for any aspect of the Design Services, including inspections, quality control or design administration services that will be provided by the Architect under its Design Services Agreement. Likewise, the Authority and the Indemnitees are not and shall in no event be, responsible or liable to the Construction Manager or other Project Team members for any Claims for payment of additional money or costs above the GMP arising out of or related to any aspect of the Construction Manager's performance of the Work. In no event shall the Authority or Indemnitees have any responsibility or liability for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Authority and Indemnitees in the Contract Documents.

ARTICLE 4

CONTRACT TIME

4.1 The Construction Manager shall perform the Work expeditiously, efficiently, and safely in accordance with the Construction Schedule. The Construction Manager shall commence its Work upon receipt of a Notice to Proceed as provided in **Subparagraph 2.3.1** hereof and, subject to authorized Contract Revisions, Construction Manager shall achieve Substantial Completion of the Work within the time frames specifically described in **Exhibit 4** hereof. The Construction Manager shall be considered to have achieved Final Completion only after the Construction Manager completes all of the Work and the Work is accepted by the Authority and Architect. The staging of the Work is more definitively described in **Exhibit 4** hereof.

4.2 Liquidated Damages

The Authority and Construction Manager acknowledge and agree that the Authority is making a considerable investment and the damages from the risks inherent in the Project are difficult to forecast or predict, but that the Authority is relying principally on the Construction Manager's experience and expertise to complete the Work on schedule and to mitigate the risks of late completion to the Authority. For purposes of this **Paragraph 4.2**, the Authority and Construction Manager have established a structure to address the Construction Manager's liability for damages for delays in Substantial Completion according to the liquidated amounts described below. The liquidated damages agreed to below are only intended to cover damages arising out of Construction Manager's unexcused failure to achieve Substantial Completion by the Date of Substantial Completion, and nothing contained in this **Paragraph 4.2** or elsewhere in the Contract Documents, including **Exhibit 4** hereof, shall in any manner limit the Authority or Construction Manager's rights or ability to recover damages (direct, consequential, or incidental) for any other breach of this Construction Services Agreement.

4.2.1 Liquidated Damages

The Construction Manager acknowledges that the Authority has advised the Construction Manager regarding the following:

- .1** the Authority, the Team, and their respective Affiliates are incurring substantial and unprecedented costs to construct the Project;
- .2** the Authority, the Team, and their respective Affiliates will be incurring significant indebtedness to pay such costs, which indebtedness must be serviced whether or not Substantial Completion occurs by the Date of Substantial Completion;
- .3** to justify incurring such costs and the risks being undertaken in connection with the design and construction of the Project, the Authority, the Team, and their respective Affiliates have developed a business plan that will generate substantial revenues and provide substantial new business opportunities that cannot be fully realized if Substantial Completion does not occur by the Date of Substantial Completion;
- .4** as an essential part of the consideration from the Construction Manager under this Construction Services Agreement, the Construction Manager has committed to achieve Substantial Completion not later than the Date of Substantial Completion, which will allow the Authority and the Team, among other things, the opportunity to realize the revenues and benefits expected from the Project after that date, which is essential to the public purpose and the financial success of the Project; and

- .5 if Substantial Completion of the Project does not occur by the Date of Substantial Completion, the Authority, the Team, and their respective Affiliates will suffer substantial harm, the damages for which may be incapable of being determined with certainty, very difficult to estimate accurately, likely entail substantial cost and inconvenience, and difficult to prove and calculate. The elements of such harm are expected to include: (1) lost or substantially diminished revenues from contracts that cannot be performed fully (or at all); (2) business opportunities that cannot be realized or exploited fully (or at all); (3) substantial harm and damage to the reputation of the Authority and its relationships with the public, users of the Stadium, advertisers, sponsors, and other related Persons; (4) substantial harm and damages to the reputation of the Team and its relationships with the public, ticket holders, advertisers, sponsors, and other related Persons; (5) diversion of management time; and (6) loss of full and timely use of the Project and its components to their maximum potential from and after the scheduled Date of Substantial Completion.
- .6 in light of the acknowledgements set forth above, and including the potential difficulty in calculating precisely the damages that the Authority, the Team, and their related affiliates would incur, the Parties have agreed that if all or parts of the Work is not Substantially Complete by the Date of Substantial Completion in the Construction Schedule, the Construction Manager shall pay the following amounts to the Authority as Liquidated Damages, which are agreed to be a reasonable forecast, as of the date of this Construction Services Agreement, of the damages that the Authority, the Team, and their respective Affiliates will suffer due to a delay in the scheduled Date of Substantial Completion; it is expressly agreed that the following amounts are forecasts estimated in good faith and not penalties for late completion. The Liquidated Damages shall be calculated from the scheduled Date of Substantial Completion in the Construction Schedule, as may be revised by Contract Revisions, up through and including the day when the Date of Substantial Completion is actually achieved:

Activity and Required Date	Liquidated Damage
Substantial Completion: July 1, 2016	[\$INSERT] per day
Scheduled Events	[\$INSERT] per event
Opening Day	[\$INSERT]

- 4.3 If the Construction Manager is delayed in the progress of the Work by events of Force Majeure, fire or other property damage not caused by the Construction Manager or a Subcontractor, Supplier, Sub-subcontractor of any tier, or other Person for whom Construction Manager is legally responsible, unusually severe weather conditions not customarily encountered in the area surrounding the Project which affect the scheduled progress of the Work, or any other cause for which the Construction Manager is not responsible, then the Contract Time, provided for in **Paragraph 4.1** above, shall be extended by a Contract Revision for a reasonable period of time as agreed to by the Authority. No adjustments to the Contract Time are acceptable without the prior written approval of the Authority as a Contract Revision.
- 4.4 Notwithstanding anything to the contrary in this Construction Services Agreement, the Construction Manager agrees that, regardless of the cause of delay and whether or not any extension of Contract Time may be granted therefore, Construction Manager shall continue to

prosecute all Work not directly affected by said cause of delay and, with respect to such portion or portions of the Work as may be so affected, shall take all reasonable measures to minimize the effect of said cause of delay. It is a condition precedent to the consideration or prosecution of any Claim for an extension of Contract Time that the foregoing provisions be strictly adhered to in each instance and, if the Construction Manager fails to comply, Construction Manager shall be deemed to have waived the Claim to the extent that proper mitigation would have shortened the period of delay.

- 4.5** The Construction Manager shall recommend to the Authority a schedule for procurement of long lead-time items, which will constitute part of the Work as required to meet the Milestone Dates in the Construction Schedule and the Date of Substantial Completion. If such long lead-time items are procured by the Authority or a Trade Contractor or Vendor, they shall be procured on terms and conditions reasonably acceptable to the Construction Manager, such acceptance not to be unreasonably withheld. The Construction Manager agrees that all contracts for such items may be assigned by the Authority or a Trade Contractor or Vendor to the Construction Manager as more fully described in Exhibits 3 and 6 hereto, in which case the assigned contract(s) will become part of the GMP. The Construction Manager shall expedite the delivery of long lead-time items whether such long lead-time items are procured by the Construction Manager, the Authority, or a Trade Contractor or Vendor during the Pre-Construction Phase or Construction Phase.

ARTICLE 5

Guaranteed Maximum Price

5.1 Guaranteed Maximum Price (GMP)

5.1.1 As part of its Pre-Construction Phase Services described in Exhibit 1 hereto, the Construction Manager will be asked to prepare a Construction Management Plan including a GMP Proposal for the Work and a Construction Schedule based on the GMP Pricing Documents. If the Construction Management Plan is acceptable to the Authority and Team, which decision shall be in their sole discretion, then the Construction Manager's Construction Management Plan shall be added to this Construction Services Agreement as a Contract Revision in the form of a completed Exhibit 3 hereto. The Authority may require that the GMP be separated into two or more separate sums and be tracked separately throughout the course of the Work.

5.1.1.1 The GMP shall include an aggregate line item for Construction Manager's General Conditions which shall itself be a Guaranteed Maximum Price for that line item (the "**General Conditions GMP**" or "**GCGMP**"). Construction Manager will not apply for payment for any Cost of the Work that it incurs in excess of the GCGMP or be entitled to any increase in the GCGMP except for reasons that would entitle Construction Manager to a Contract Revision under this Construction Services Agreement increasing the GMP. The amount of the GCGMP shall be \$[INSERT] Dollars or _____ Percent (___%) of the GMP.

- .1** General Conditions include costs for the field office(s) such as copies, fax machines, postage, computers, carts, office rent, office trailers, utilities, telephones, telephone service, cellular phones, office supplies, office furniture, security, radios, blueprinting, pest control, in-state transportation, out of state transportation, safety, first aid, temporary fencing, temporary barricades, cleaning, dumpsters, final cleaning, temporary roads, security, traffic control, bid advertisement, temporary toilets, street cleaning, sidewalk protection, temporary partitions, snow removal, general hoisting, base line/monument surveying, pre-construction surveying, pest controls and orientation/badging/drug testing program. Any safety awards incentive program shall be part of Construction Manager's General Conditions GMP

5.1.1.2 If and when appropriate and as approved by the Authority and Team consistent with the Act, the Construction Manager may be allowed to perform a portion of the Work with its own forces as provided pursuant to Exhibit 6 hereof, in which case the Construction Manager will provide either an agreed upon lump sum price ("**Self Performed Lump Sum**" or "**SPLS**") or a Guaranteed Maximum Price for that line item (the "**Self Performed GMP**" or "**SPGMP**"). Construction Manager will not apply for payment for any Cost of the Work that it incurs in excess of the SPLS or SPGMP or be entitled to any increase in the SPLS or SPGMP except for the same reasons that would otherwise entitle Construction Manager to a Contract Revision under this Construction Services Agreement increasing the GMP.

5.1.1.3 Construction Manager's GMP shall contain a Construction Manager Contingency as more fully described in Exhibit 3 hereof to cover the risks inherent in providing a GMP for the Work. Construction Manager may not use the Construction Manager Contingency established for the GMP to fund any Cost of the Work applicable to and in excess of the GCGMP, SPGMP, or SPLS; Construction Manager acknowledges that the GCGMP and the SPGMP or SPLS each have their own contingencies that are already part of the GCGMP, SPGMP, or SPLS and that are separate from the

Construction Manager Contingency. The Construction Manager Contingency shall be \$[INSERT] Dollars or _____Percent (___%) of the GMP.

5.1.1.4 Allowances included in the GMP, if any, are listed in **Exhibit 3** hereto.

5.1.1.5 The Construction Manager's Fee for Pre-Construction Phase Services shall be a fixed amount of \$[INSERT] Dollars, which shall be included in the GMP.

5.1.1.6 As described in **Exhibit 3** hereto, the Construction Manager's Fee for Construction Phase Services shall be a fixed amount that represents a percentage of the originally estimated Cost of the Work which percentage shall be [INSERT] (___%) Percent. If the Authority orders changes to the scope of the Work increasing the GMP by _____ million dollars (\$_____) in the aggregate, then the Construction Manager shall be entitled to an adjustment to its Fee of _____ percent (___ %) of the value of the increase in the GMP in excess of such amount. But, if the total aggregate value of the Changes in the Work are less than such amount, then the Construction Manager shall not be entitled to an increase of the Construction Manager's Fee.

5.1.2 The GMP will be calculated and Contract Time established on the basis of the GMP Pricing Documents given to the Construction Manager at the time the GMP Proposal is requested. The Construction Manager acknowledges that, as of the date it will be asked to execute **Exhibit 3** hereto, all the Design Documents necessary for the Work will not be finalized, but Construction Manager agrees that the GMP Pricing Documents will be sufficiently complete to enable Construction Manager to guarantee and agree to perform its Work for the GMP based on the final Construction Documents that will be developed by the Architect. Construction Manager knows and understands the Program, understands that the GMP Pricing Documents are intended to satisfy the Program, and agrees that it can deliver the Work contemplated by the Program for the GMP based on the GMP Pricing Documents. In determining the GMP and Contract Time, the Construction Manager will take into account the level of completeness of the GMP Pricing Documents and will exercise the best skill and efforts of the Construction Manager to make (1) all appropriate judgments and inferences about how the Documents will be completed as Construction Documents based on the Program and Applicable Law, and (2) all inquiries of and discussions with the Authority, Team, and Architect as necessary in the Construction Manager's judgment to clarify the content and intent of the GMP Pricing Documents and the expected and intended scope of the Construction Documents in order to reliably calculate and establish both the GMP and the Contract Time.

5.1.3 By executing **Exhibit 3** to this Construction Services Agreement, the Construction Manager agrees that the Contract Documents (including the GMP Pricing Documents), materials, and information furnished to the Construction Manager as of the date of the execution of said **Exhibit 3** and the ongoing discussions and meetings between the Construction Manager and the Authority, Team, and the Architect up to said execution will have described the scope, construction requirements, and design intent of the Work in detail sufficient to enable the Construction Manager to establish firmly the GMP and the Construction Schedule. The Construction Manager shall not be permitted to claim any adjustment in either the GMP or Contract Time in connection with the completion of final Construction Documents, unless allowed pursuant to **Article 14**.

5.1.4 The GMP as described in **Subparagraph 5.1.1** hereof is guaranteed by the Construction Manager not to exceed the amount to be described in **Exhibit 3** hereto, subject to additions and deductions by Contract Revisions as provided in **Subparagraph 14.1.1** hereto. The GMP may also be referred to in the Contract Documents as the Contract Sum. Costs which would cause the GMP to be exceeded, other than for Contract Revisions in the Work pursuant to **Subparagraph 14.1.1** hereof, shall be paid by the

Construction Manager without reimbursement by the Authority or Team. By virtue of providing the GMP, the Construction Manager shall, as required by the Act, accept the risk of cost overruns in excess of the GMP and agreed upon Contract Revisions and such cost overruns shall not be the responsibility of the Authority, State, or Team.

5.1.5 The Construction Manager acknowledges and agrees that the intent of this Construction Services Agreement is for the Construction Manager to provide the timely completion of all Work required by the Contract Documents within the Contract Time required by the Construction Schedule for an amount not to exceed the GMP.

5.1.6 The GMP includes a Construction Manager Contingency to cover any and all foreseen and unforeseen costs as more specifically described in **Exhibit 3** hereof. The Construction Manager hereby acknowledges and agrees that the intent of the GMP is to include all costs associated with the complete construction of the Work.

5.2 Construction Manager Corporate Guaranty

5.2.1 The Construction Manager absolutely and unconditionally guarantees to the Authority and the Indemnities that all of the Work under this Construction Services Agreement will be performed in accordance with the Contract Documents and will not be defective. The Construction Manager's obligation to complete the Work in accordance with the Contract Documents shall be unconditional and absolute. The Construction Manager shall pay to the Authority all costs incurred, including reasonable attorney fees, in enforcing the performance and payment of this guaranty. If the Construction Manager is an Affiliate of another parent entity or Person, or if the Construction Manager is a joint venture partner in a joint venture, the Affiliate parent entity or joint venture partner must sign the Guaranty that is attached hereto as **Exhibit 8**.

ARTICLE 6

DISCOUNTS, REBATES, AND REFUNDS

- 6.1** Cash discounts obtained on payments made to Subcontractors or Suppliers shall accrue to the Authority during or after the term of this Construction Services Agreement. Trade discounts, rebates, refunds, and amounts received from sales of surplus material and equipment shall accrue to the Authority. The Construction Manager shall notify the Authority of provisions that will be required of the Authority to secure trade discounts, rebates, and refunds as described in this **Paragraph 6.1**. If it elects to do so, the Authority shall advance such funds in a timely manner as are required to take advantage of discounts. The Construction Manager shall not obtain for its own benefit any discounts, rebates, or refunds in connection with the Work prior to providing the Authority with seven (7) days' prior written notice of the potential discount, rebate, or refund and an opportunity to furnish funds or take other actions necessary to obtain such discount, rebate, or refund on behalf of the Authority in accordance with the requirements of this **Paragraph 6.1**.

ARTICLE 7

ACCOUNTING RECORDS

- 7.1** The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Services Agreement and as directed by the Authority and Team. The accounting and cost control systems shall be reviewed and approved by the Authority and Team. Upon receiving seven (7) days notice, the Construction Manager shall afford the Authority or Team and the Authority's or Team's accountants reasonable access to the necessary and relevant Construction Manager's records, books, cost reports, labor rates, labor schedules, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Construction Services Agreement, and the Construction Manager shall preserve this information for a period of twelve (12) years after final payment, or for such longer period as may be required by the Authority or by law. The Construction Manager shall account for and keep track of the Cost of the Work, including all materials, equipment and labor utilized in the performance of the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Construction Services Agreement. All records shall be maintained in accordance with Generally Accepted Accounting Procedures, consistently applied. Subcontractors retained by the Construction Manager on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of the Construction Manager under this **Article 7**. In addition to all other rights under the Contract Documents, the Authority and Team representatives shall have the right to conduct full and complete audits of the Construction Manager with respect to the Work. If any inspection by the Authority or Team of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment, the Construction Manager shall pay the Authority upon demand an amount equal to such overcharge, for reimbursement for said overcharge, and all administrative and legal expenses incurred in determining or recovering the overcharge.
- 7.2** The Construction Manager shall provide the Authority and Team copies of all documents and records associated with the Work that the Authority or Team deem necessary. The Construction Manager shall provide all Subcontracts, material purchase orders, and insurance certificates to the requesting party in an executed format for all Subcontractors and Suppliers prior to any such Person commencing work on the Project. The Construction Manager will strictly enforce this requirement.
- 7.3** The Construction Manager is obligated to utilize a Subcontract template for all its Subcontracts that is submitted to the Authority for its approval prior to such use, which approval shall not be unreasonably withheld.
- 7.4** All changes to the Work must be approved in strict accordance with the requirements of the Contract Documents, including the procedures and use of the Contract Request Form and Contract Revision forms that will be added as **Exhibit 11** to this Construction Services Agreement as the Project Manual is developed in the future. No change in the Work, in any form, will be approved for payment without the Construction Manager providing the Authority with all required documentation, including a properly completed Contract Request Form, and in accordance with the procedures that will be set forth in **Exhibit 11**. The Contract Request Form, and all required contractual documentation associated therewith and required by the Authority, must be provided to and approved by the Authority in writing before commencement of any proposed changes in any part of the Work. The Authority will administer a Pending Change Report to identify and track any and all potential changes in the Work, and the Construction Manager is obligated to provide all supporting documentation required by the Authority to administer the Pending Change Report. The Authority will use the Pending Change Report to provide the Architect and

Construction Manager with written authorization to proceed with commencing changes to the Work. The Construction Manager is responsible to immediately provide the Authority with notification of any pending change associated with the Work and to provide projected cost impacts within forty-eight (48) hours of notification of such change. The Authority and Construction Manager must agree on the allocation of the cost of the pending change (*e.g.* Construction Manager Contingency) prior to including any such pending change on the Pending Change Report. The Construction Manager is responsible to provide final costs associated with any pending change within two (2) weeks of inclusion on the Pending Change Report, or such other timeframe as agreed to in writing by the Authority. The Construction Manager is responsible to provide the Authority with a Contract Request Form within forty-eight (48) hours of obtaining final costs for any pending changes. If the Construction Manager performs any alleged change in the Work in the absence of proper notice required by the Contract Documents, the Construction Manager then assumes all liability for such Work, understands and agrees that the Construction Manager will not be paid for such Work, and agrees that the Authority is not obligated to compensate the Construction Manager for such alleged change as a Cost of the Work or as an addition to the GMP. The Authority reserves the right to amend this procedure in the event an electronic method is developed for these functions or a web-based project management system is utilized by the Authority.

ARTICLE 8

COSTS TO BE REIMBURSED

8.1 The term “**Cost of the Work**” shall mean costs reasonably and necessarily incurred by the Construction Manager for the proper performance of the Work. Such costs shall be at rates not higher than the standard paid in the Minneapolis/St. Paul metropolitan area for similar work, services, labor, equipment, or materials except with prior written consent of the Authority. The Cost of the Work shall include only the items set forth in this **Article 8**. Except for rates and costs that are stated on attached Exhibits, the Cost of the Work as defined herein, including stipulated labor burdens, equipment rates, and insurance costs, shall and are represented by the Construction Manager to be actual costs paid or incurred by the Construction Manager, less all discounts, rebates, and salvage or scrap values that shall be taken by the Construction Manager, subject to **Article 6** of the Construction Services Agreement. All payments made by the Authority pursuant to this **Article 8**, whether those payments are actually made before or after the execution of **Exhibit 3** to the Construction Services Agreement, are included within the GMP specified in **Article 5** above. In no event shall the Authority be required to reimburse the Construction Manager for any portion of the Cost of the Work incurred prior to execution of this Construction Services Agreement.

8.1.1 Construction Manager’s Fee

- .1 For all Pre-Construction Phase Services set forth in **Exhibit 1** hereto, the Construction Manager will charge only the fixed Fee for Pre-Construction Phase Services stated in **Subparagraph 5.1.1.5**. The Fee for Pre-Construction Phase Services is guaranteed by the Construction Manager and shall not increase unless pursuant to a Contract Revision agreed to by the Authority.
- .2 For all Construction Phase Services set forth in **Exhibit 1** hereto and required for the proper performance of the Work, the Construction Manager shall be compensated in the amount of the Construction Manager’s Fee stated in **Subparagraph 5.1.1.6** hereto and as described in **Exhibit 3** of this Construction Services Agreement.

8.1.2 Labor Costs

- .1 Actual wages of construction workers directly employed by the Construction Manager to perform the Work at the Project Site or, with the Authority’s written agreement, at off-site workshops. Construction Manager shall be responsible for paying prevailing wages as will be provided in the Contract Documents.
- .2 Actual wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the Project Site with the Authority’s written agreement. Actual wages and salaries of the Construction Manager’s supervisory personnel stationed at the home office only with written approval in advance by the Authority.
- .3 Actual wages and salaries of the Construction Manager’s supervisory and administrative personnel engaged at factories, workshops, or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for such Work.
- .4 Costs actually paid or incurred by the Construction Manager for non-supervisory or non-administrative personnel for taxes, insurance, contributions, assessments and benefits required by law, fringe benefit funds, or collective bargaining agreements, and, for personnel not covered by such agreements, customary

benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under **Subparagraphs 8.1.2.1 through 8.1.2.3**. The cost of such taxes, insurance, contributions, and assessments shall be charged to the Project at their actual audited rate but in no event greater than a rate of 30% of gross payroll.

8.1.3 Subcontract Costs

Payments made to Subcontractors in accordance with the requirements of the Contract Documents and the subcontracts between the Construction Manager and Subcontractors, for the Work and only when properly authorized by the Authority in strict accordance with the Contract Documents.

8.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

- .1** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2** Costs of materials described in the preceding **Subparagraph 8.1.4.1** in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials or equipment, if any, shall be handed over to and become property of the Authority at the completion of the Work or, at the Authority's option, shall be returned, sold, recycled, or scrapped by the Construction Manager; amounts realized, if any, from such returns, sales, recycling, or scrap shall be credited to the Authority as a deduction from the Cost of the Work. Materials that are determined to be waste by the Authority shall be properly disposed of or recycled by the Construction Manager. The Construction Manager shall maintain a complete record of all materials and equipment purchased by the Construction Manager for the Work.

8.1.5 Cost of Other Materials and Equipment, Temporary Facilities and Related Items

- .1** Costs, including transportation, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, office equipment for the field office, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost or value at the time of use at the Project Site less salvage value on such items when no longer used at the Project Site if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall be based on their fair market value at the time they are used at the Project Site.
- .2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs, replacements, dismantling and removal thereof. Costs of machinery and equipment shall require approval of the Authority. The Construction Manager shall provide a written equipment schedule with proposed costs for the equipment for review and approval by the Authority. Authority shall determine which items are purchased and/or leased and shall receive all purchased items at the conclusion of the Project. Rental rates for equipment owned by the Construction Manager or an Affiliated Entity shall not exceed seventy-five percent (75%) of the rates in the current edition of "Compilation of Rental Rates

for Construction Equipment,” prepared by Associated Equipment Distributors, Oak Brook, Illinois or those generally prevailing in the location of the Project, whichever is less, and total no more in the aggregate than eighty percent (80%) of the fair market value of the equipment in question as of the date that such machinery or equipment is first put into service in connection with the Work. The Construction Manager shall obtain bids for all machinery and equipment to be rented from no less than two (2) responsible suppliers other than the Construction Manager itself or an Affiliated Entity. The Authority shall, with the advice of the Construction Manager, determine which bid is to be accepted. In no event shall the Construction Manager be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment, whether owned or rented by Construction Manager in excess of eighty percent (80%) of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The Contractor shall pay any excess rental charges.

- .3 Costs of removal of debris from the Project Site and its proper legal disposal, salvage or recycling, and costs of on-site salvage or recycling of material. The value of recycled and salvaged material will be credited to the Authority.
- .4 Costs of the Construction Manager’s Project Site office and costs of the Architect’s and Authority’s and Team’s Representatives’ Project Site offices provided by the Construction Manager, including long-distance telephone calls, postage and parcel delivery charges, telephone service, internet service, website charges, photography, cell phones, radios, and vehicles as approved by the Authority. The Authority shall determine which items are purchased and/or leased and shall receive all purchased items at the conclusion of the Project.
- .5 Except for personnel who reside within one-hundred (100) miles of the Project Site, that portion of the reasonable out-of-town travel and subsistence expenses of the Construction Manager’s personnel incurred while traveling in discharge of duties connected with the Construction Manager’s Work when approved in writing by the Authority. Costs of out-of-town travel and subsistence expenses will be part of Construction Manager’s General Conditions GMP.

8.1.6 Miscellaneous Costs

- .1 That portion directly attributable to this Construction Services Agreement of premiums for insurance and bonds from the Construction Manager; provided, however, that such costs shall not be included in the Cost of the Work for purposes of calculating the Construction Manager’s Fee. If as part of its Construction Management Plan, Construction Manager proposes to require bonds from its Subcontractors of any tier or to purchase Subguard or a similar product, the Construction Manager shall provide the list of the Subcontractors it provided with its Request for Proposal in which it identified the Subcontractors that it intended to request bonds or enroll in a Subguard or similar program plus the cost of said bonds, Subguard, or similar product for the Authority to consider. The cost of any bonds from Subcontractors of all tiers or the cost of Subguard or similar product listed on the Exhibit, if approved by the Authority in its sole discretion, shall be a Cost of the Work; any Subcontractor bond or Subguard or similar program cost not approved as a Cost of the Work and shall be borne by the Construction Manager as part of Construction Manager’s Fee. If said costs are not approved by the Authority, they shall not be included as part of a Subcontractor’s subcontract or in an Application for Payment as a Cost of the Work. Whether the Subcontractor has included the cost of a bond in its Subcontract shall be subject to audit. If approved as a Cost of the Work, then

any return of premium or cost rebate from Subguard or a similar product related to this Project shall be subject to audit and returned to the Authority.

- .2 Fees and assessments for the permits, licenses, and inspections for which the Construction Manager is required by the Contract Documents to pay.
- .3 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which the General Conditions or other provisions of the Contract Documents exclude reimbursement.
- .4 Deposits lost for causes other than the Construction Manager's fault or negligence.

8.1.7 Other Costs

- .1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Authority.

8.1.8 Emergencies: Repairs to Damaged, Defective or Nonconforming Work

- .1 Costs reasonably incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the Contract Documents.
- .2 Costs reasonably incurred in repairing or correcting damage to the Construction Manager's Work provided such damage did not result from the fault or negligence of the Construction Manager's supervisory personnel as described in **Subparagraph 9.1.7**, and only to the extent that the cost of such repairs is not recoverable by the Construction Manager from others and the Construction Manager is not compensated therefore by insurance or otherwise.

8.1.9 Value Added Taxes, Including Goods & Services Tax, Sales Taxes

- .1 Where applicable, value added taxes and similar taxes imposed by any Governmental Authority that are related to the Work and for which the Construction Manager is liable are included in the GMP. These costs are to be tracked and identified by the Construction Manager for potential refunds to the Authority by the appropriate Governmental Authorities.

8.1.10 Affiliated Entity Transaction

- .1 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and an Affiliated Entity, the Construction Manager shall notify the Authority of the specific nature of the contemplated transaction, including the identity of the Affiliated Entity and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Authority, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a Cost of the Work to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the Affiliated Entity, as a Subcontractor or Supplier. If the Authority fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some Person other than an Affiliated Entity.

ARTICLE 9

COSTS NOT TO BE REIMBURSED

- 9.1** The Construction Manager shall be responsible for but shall not be paid, or under any circumstance entitled to receive, any of the following as a Cost of the Work or otherwise:
- 9.1.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office, except as specifically provided in **Subparagraphs 8.1.2.1** and **8.1.2.2** or as may be provided in **Article 14**.
 - 9.1.2** Expenses of travel and subsistence of the Construction Manager's personnel other than for specific Project-related travel as described in **Subparagraph 8.1.5.5**.
 - 9.1.3** Expenses of the Construction Manager's principal office and offices other than the Project office at the Project Site.
 - 9.1.4** Overhead and general expenses, except as may be expressly included in **Article 8**.
 - 9.1.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
 - 9.1.6** Rental or other costs of machinery and equipment, except as specifically provided in **Subparagraph 8.1.5** and only when approved in advance in writing by the Authority.
 - 9.1.7** Except as provided in **Subparagraph 8.1.8.2** hereof, costs due to the fault or negligence of the Construction Manager's personnel and to the extent not otherwise able to be recovered from others or insurance, including costs for the correction of damaged, defective, or nonconforming Work, delays, disposal and replacement of materials and equipment incorrectly ordered or supplied, or damaging property not forming part of the Work.
 - 9.1.8** Costs and fees of legal or other professional services of the Construction Manager, unless otherwise approved in writing by the Authority, in the Authority's discretion, as a Cost of the Work to be reimbursed under **Article 8** hereof. Attorneys' fees and costs associated with Construction Manager's compliance with its indemnity and defense obligations under **Paragraph 4.18** of **Exhibit 6** are not reimbursable.
 - 9.1.9** Costs of overtime, lost productivity or loss of profit associated with the Work and the Construction Manager's responsibility to complete the Work in an amount that exceeds the GMP, unless approved in advance in writing by the Authority on the approved Contract Request Form, in the Authority's discretion, as a Cost of the Work to be reimbursed under **Article 8** hereof. Failure to provide notice of such a Claim pursuant to the Contract Documents and receive advance written approval from the Authority in the form of a Contract Revision shall result in a waiver of any Claims for reimbursement of such costs.
 - 9.1.10** Costs associated with the rescheduling or re-sequencing of any Phase of the Work including the Work of Subcontractors, Suppliers, and Sub-subcontractors of all tiers, unless approved as a proper use of the Construction Manager Contingency by the Authority in writing before such costs are incurred by the Construction Manager, such approval not to be unreasonably withheld, in which case said costs will be considered to be a Cost of the Work to be reimbursed under **Article 8** hereof.

- 9.1.11** Any cost of the Construction Manager, Subcontractor, Supplier, or Sub-subcontractors of all tiers incurred in the performance of the Work that was not properly bid, awarded, and administered in strict accordance with the Contract Documents.
- 9.1.12** Costs involving the Construction Manager, Subcontractors, Supplier, or Sub-subcontractors of all tiers associated with changes involving the means, methods, materials, techniques, equipment and related costs, unless otherwise approved as a proper use of the Construction Manager Contingency by the Authority in writing before such costs are incurred by the Construction Manager, such approval not to be unreasonably withheld, in which case said costs will be considered to be a Cost of the Work to be reimbursed under **Article 8** hereof.
- 9.1.13** Costs resulting from coordination problems or delays that are the responsibility of the Construction Manager in the development and processing of the Contract Documents including Submittals unless approved as a proper use of the Construction Manager Contingency by the Authority in writing before such costs are incurred by the Construction Manager, such approval not to be unreasonably withheld, in which case said costs will be considered to be a Cost of the Work to be reimbursed under **Article 8** hereof.
- 9.1.14** Costs of governmental fees, damages, penalties, or sanctions that may be imposed on the Construction Manager, Subcontractors, Suppliers or Sub-subcontractors of all tiers due to their performance of the Work. This includes any fees, damages, penalties, or sanctions associated with the failure of the Construction Manager to comply with the Project's Targeted Business and workforce participation plan or Applicable Laws.
- 9.1.15** Costs, if any, which would cause the GMP to be exceeded.
- 9.1.16** Costs associated with any penalties, deductibles, legal fees, claims, or losses associated with the Project Safety Program. Insurance deductibles shall be paid in accordance with **Article 13** of **Exhibit 6** hereof.
- 9.1.17** Costs associated with administration of the insurance policies and any losses, deductibles, penalties or claims associated with the insurance for the Project. Insurance deductibles shall be paid in accordance with **Article 13** of **Exhibit 6** hereof.
- 9.1.18** Any cost not specifically and expressly described in **Article 8** hereof.
- 9.1.19** Other than Construction Manager's Fee, any markup fees for General Conditions.

ARTICLE 10

SUBCONTRACTS AND OTHER AGREEMENTS

- 10.1** The Work shall be bid or solicited as required by the Authority and awarded to Subcontractors in strict accordance with the Contract Documents and performed pursuant to the terms and conditions of the approved form of Subcontract to be executed between the Construction Manager and all Subcontractors. For Work not yet awarded, the Construction Manager shall obtain bids or solicit competitive proposals as determined by the Authority from Subcontractors and from Suppliers and shall deliver all such bids to the Authority for review and approval by the Authority. The Construction Manager will recommend to the Authority which Subcontractors and Suppliers it proposes to use, which selection shall be subject to the approval of the Authority, such approval not to be unreasonably withheld. The Authority may designate specific persons or entities from which the Construction Manager shall obtain bids or proposals; however, if the GMP has been approved by the Authority, the Authority may not prohibit the Construction Manager from obtaining bids or proposals from other firms that meet the qualification requirements established in the Contract Documents to perform that portion of the Work. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
- 10.2** Each Subcontract shall: (1) preserve and protect the rights of the Authority under this Construction Services Agreement with respect to the Work to be performed under the Subcontract so that the subcontracting thereof will not prejudice such rights; (2) require the Subcontractor to represent and warrant that it is knowledgeable, to the extent required by the Subcontractor's portion of the Work to be performed, of the Applicable Laws, NFL Rules and Regulations, and applicable codes, standards, rules and regulations applicable to a Project of this type in Minnesota and agree to comply with each of the foregoing; (3) require the Subcontractor to represent and warrant that it is experienced and fully qualified to perform the portion of the Work contemplated to be performed by the Subcontractor; (4) require the Subcontractor to represent and warrant that it is properly licensed, certified, registered and organized to perform such Work under Applicable Laws or any similar requirements in the State of Minnesota; (5) require the Subcontractor to assume toward the Construction Manager and Authority all of the obligations and responsibilities that Construction Manager by the terms of this Construction Services Agreement assumes toward the Authority; (6) require the Subcontractor to acknowledge and agree that the services performed by the Subcontractor are for the benefit of the Authority and Team and the Authority and Team shall have the right to enforce the obligations, responsibilities, and duties of the Subcontractor directly against the Subcontractor; (7) require the Subcontractor to name the Authority and Team as an intended third-party beneficiary to the duties, requirements and obligations of the Subcontractor; (8) require the Subcontractor to acknowledge that the Subcontractor shall have no direct claim, right or cause of action against the Authority or Team by virtue of its third-party beneficiary status; (9) include a provision allowing the Construction Manager to assign the Subcontract to the Authority, a Lender, the Team, or any of the foregoing parties' designees without the Subcontractor's consent or change in the contract price or other terms of compensation; (10) require that such Work be performed in strict accordance with the requirements of the Contract Documents; (11) require a waiver of all Claims for additional costs or damages for delays with respect to subcontracted portions of the Work unless notice for such Claims is provided pursuant to the Contract Documents and agreed in writing by the Construction Manager and Authority before the work that is the subject of the Claim commences; (12) waive all rights the contracting parties may have against one another for damages caused by fire or other perils to the extent covered by the property insurance specified in the Contract Documents; (13) obligate each Subcontractor specifically to consent to all of the terms and conditions of this Construction Services Agreement; (14) require that each Subcontractor agree to indemnify and hold harmless the Authority and all Indemnitees for any and all claims, damages, losses and expenses, including, but not limited to attorney fees, arising out of or resulting from Subcontractor's negligence or breach of Subcontract; and (15) require each Subcontractor to purchase insurance naming the Authority and all Indemnitees as additional insureds and such insurance be provided to Authority

prior to any Subcontractor commencing any of the Work. All insurance provided by any Subcontractor pursuant to this **Paragraph 10.2** shall be primary over and above any insurance provided by the Authority. The Construction Manager shall require each Subcontractor to enter into similar agreements with all Sub-subcontractors and Suppliers. The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound.

- 10.3** The Authority may elect to award portions of the Project to Trade Contractors and Vendors pursuant to the terms and conditions of a Trade Contract or Vendor Contract to be executed between the Authority and the Trade Contractor or Vendor. The Construction Manager will be responsible for coordinating, scheduling, and integrating the Trade Contractor Work or Vendor Work with the Work of the Construction Manager in accordance with the terms and conditions of the Contract Documents. The Authority reserves the right to assign the rights and obligations of any Trade Contract or Vendor Contract to the Construction Manager, which assignment the Construction Manager agrees to accept. Upon the assignment of a Trade Contract or Vendor Contract to the Construction Manager, the Trade Contractor Work included in the Trade Contract or Vendor Work in included in the Vendor Contract shall become a part of the Construction Manager's Work, and the Trade Contractor or Vendor shall become a Subcontractor of the Construction Manager. Any Trade Contract or Vendor Contract that is assigned to the Construction Manager shall increase the GMP by the remaining amount to be paid under said contract.
- 10.4** If the GMP has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Authority (1) is recommended to the Authority by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without material reservations or exceptions, but the Authority unreasonably refuses to approve the Subcontractor recommended by the Construction Manager, then a Contract Revision shall be issued to adjust the GMP by the difference between the bid of the person or entity recommended to the Authority by the Construction Manager and the amount of the Subcontract or other agreement actually signed with another Person selected by the Construction Manager and approved by the Authority.
- 10.5** The Construction Manager shall be responsible to provide the Authority with a final form of Subcontract (in strict accordance with the terms and conditions set forth in the Contract Documents) and a final form of Purchase Order for materials proposed by the Construction Manager for the Project that shall be reviewed and approved by the Authority, which approval shall not be unreasonably withheld. Once approved by the Authority, the Construction Manager shall use the approved form of Subcontract and Purchase Order for all Work. The Construction Manager is required under the Contract Documents to provide the Authority with a complete Contract Request Form and Bid Analysis, in a format provided by or approved by the Authority, as a basis for recommending the award of any Subcontract, Purchase Order for materials, or Contract Revision. The Construction Manager will be required to provide the Authority with copies of all proposed Subcontracts and Purchase Orders prior to execution with any Subcontractor or Supplier for review and approval by the Authority. The Authority shall have a minimum of ten (10) working days for the review and approval of all Subcontracts or Purchase Orders. The Construction Manager must provide the Authority with copies of all executed Subcontracts, Purchase Orders for materials, and Contract Revisions for the Project file. All Subcontracts or other agreements shall conform to the provisions of this Construction Services Agreement and the Contract Documents. Subcontracts shall not be awarded on the basis of cost plus a fee without the prior written consent of the Authority. The Construction Manager will not allow any Subcontractor to proceed with the Work without the Subcontract signed by the Construction Manager and Subcontractor. The Construction Manager is solely responsible for any and all costs resulting from failure to strictly adhere to the contracting requirements set forth in the Contract Documents.

- 10.6** The Construction Manager warrants and represents that the bidding and award of all Subcontracts will conform to the directions of the Authority as allowed by the Act and the Construction Services Agreement. If best value procurement is used to select Subcontractors, the Construction Manager represents and warrants that all of its personnel involved in the procurement of Subcontractors are duly trained in the administration of best value procedures.
- 10.7** Except as otherwise allowed by the Act, all of the Work, including any Work that is self-performed by the Construction Manager, must be bid and awarded under the terms and conditions of **Paragraph 4.20** of **Exhibit 6** hereof, and that Work must be contracted for under the form of Subcontract referenced in **Paragraph 10.5** of the Construction Services Agreement.
- 10.8** The Construction Manager shall comply with all Applicable Laws and any special requirements in the Contract Documents regarding equal employment opportunity, Targeted Business, and workforce participation initiatives.
- 10.8.1** The Construction Manager shall demonstrate good faith efforts to utilize minority (“MBE”) and women-owned (“WBE”) business enterprises (hereinafter referred to as “Targeted Businesses”). The Authority has retained the services of a Targeted Business Coordinator to assist the Construction Manager in meeting its Targeted Business and workforce participation goals. The Construction Manager shall submit to the Authority a Targeted Business Enterprise Participation Plan within ten (10) calendar days after executing this Construction Services Agreement. Subcontractors shall submit a Targeted Business Enterprise Participation Plan with any proposal or bid related to the Project. The Authority requires that the Construction Manager utilize good faith efforts to achieve the goals for MBE and WBE participation set forth in the Authority’s Targeted Business and workforce participation plan. The Authority also requires that the Construction Manager utilize good faith efforts to achieve the workforce participation goals for minority and women workers on the Project. The Construction Manager shall utilize the Targeted Business Coordinator to the fullest extent possible to accomplish the following activities:
- .1** Identify the trades, services and suppliers needed for the Project.
 - .2** Identify Targeted Businesses that have the resources and capabilities to participate in the Project.
 - .3** Contact Targeted Businesses to solicit bids for work on the Project.
 - .4** Certify currently uncertified but qualified companies as Targeted Businesses for participation in the Project.
 - .5** Develop the Targeted Business Enterprise Participation Plan for submittal with any bid or proposal from a Subcontractor.
 - .6** Track participation of Targeted Businesses.
 - .7** Prepare Targeted Business participation reports required by the Authority.
 - .8** Comply with workforce utilization requirements of the Authority’s Targeted Business and workforce participation plan, including requirements established pursuant to Section 17, subd.1 of the Act.

Construction Manager’s failure to use good faith efforts to achieve the Authority’s Targeted Business participation goals or to follow the requirements of the Authority’s Targeted Business and workforce participation plan may result in delay or withholding of Construction Manager’s payments and the assessment of appropriate damages. A draft of Authority’s Targeted Business and workforce participation plan will be added to this Construction Services Agreement as **Exhibit 7** when it is completed.

10.9 Subcontractors and Suppliers

- 10.9.1** The Construction Manager, as soon as practicable after execution of this Construction Services Agreement, and from time to time thereafter as required by the staging of the

Work, shall furnish to the Authority, in writing, the names of the Persons the Construction Manager proposes to engage as Subcontractors and Suppliers for the Work.

ARTICLE 11

PAYMENTS

- 11.1** Based upon Applications for Payment submitted by the Construction Manager and Certificates for Payment issued by the Architect, the Authority shall make payment to the Construction Manager as set forth in the General Conditions included as Exhibit 6 hereto. Construction Manager will hold payments it receives in trust to be used for Costs of the Work incurred on this Project only and shall require by contract its Subcontractors and Suppliers to similarly hold payments received in trust. Construction Manager agrees that any payments not so used shall be subject to equitable tracing and returned to the Authority.
- 11.2** The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month, or as otherwise agreed to between the Authority and Construction Manager in writing.
- 11.3** Provided that a Construction Manager Application for Payment is approved for full or partial payment, the Authority shall make payment of the approved amount to the Construction Manager not later than thirty (30) days after the Authority has received the Architect's Certificate for Payment.
- 11.4** Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Construction Manager and approved by the Authority and Architect in accordance with the Contract Documents. The Schedule of Values shall allocate the entire GMP among the various portions of the Work as required by the Authority. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Authority may require. The Schedule of Values, unless objected to by the Authority, shall be used as a basis for reviewing the Construction Manager's Application for Payment. The Construction Manager's Application for Payment will be rejected if the Schedule of Values is inconsistent between months or if the Schedule of Values is "front-end loaded" or otherwise unbalanced at the time the Construction Manager Application for Payment is submitted.
- 11.5** The Construction Manager Application for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Construction Manager Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the Cost of the Work which has actually been incurred on account of that portion of the Work for which payment has been made or is intended to be made prior to the next Construction Manager Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.
- 11.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- 11.6.1** Determine the portion of the GMP properly allocable to completed Work as determined by Subcontractor Applications for Payment, Construction Manager invoices and certified payroll summaries and as more particularly described in the Schedule of Values.
- 11.6.2** Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work, or, if approved in advance by the Authority, suitably stored off the Project Site at a location agreed upon in writing.

- 11.6.3** Add the Construction Manager's Fee plus Construction Manager General Conditions (staffing) costs as approved by the Authority. The Construction Manager's Fee shall be computed upon the Cost of the Work in accordance with **Exhibit 3** hereof, or, if the Construction Manager's Fee is stated as a fixed sum, shall be an amount which bears the same ratio to that fixed-sum as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- 11.6.4** Subtract retainage of no less than five percent (5%). The Authority will in its discretion approve any deviation from this requirement.
- 11.6.5** Subtract the aggregate of previous payments made by the Authority.
- 11.6.6** Subtract the shortfall, if any, indicated by the Construction Manager required to substantiate prior Construction Manager Applications for Payment, or resulting from errors subsequently discovered by the Authority's accountants in such documentation.
- 11.6.7** Subtract amounts, if any, for which the Authority has reasonably withheld or denied a Construction Manager Application for Payment as provided in the Contract Documents.
- 11.7** Except with the Authority's prior written approval, payments to Subcontractors included in the Construction Manager's Application for Payment shall not exceed an amount for each Subcontractor calculated as follows:
- 11.7.1** Determine the portion of the Subcontract Amount properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Amount allocated to that portion in the Subcontractor's Schedule of Values, less retainage.
- 11.7.2** Add that portion of the Subcontract Amount properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work or, if approved in advance by the Authority and Construction Manager, suitably stored off the Project Site at a location agreed upon in writing.
- 11.7.3** Subtract the aggregate of previous payments made by the Authority, through the Construction Manager, to the Subcontractor.
- 11.7.4** Subtract amounts, if any, for which the Authority or Construction Manager has withheld or denied a Subcontractor Application for Payment for reasons that are the fault of the Subcontractor.
- 11.7.5** Add, upon Substantial Completion of the entire Work of the Subcontractor, a sum sufficient to increase the total payments to the Subcontractor to one-hundred percent (100%) of the Subcontract Amount, less amounts, if any, for incomplete Work and unsettled claims; and, if final completion of the entire Work is thereafter materially delayed through no fault of the Subcontractor, add any additional amounts payable on account of Work of the Subcontractor in accordance with the Contract Documents. The Subcontract Amount is the total amount stipulated in the Subcontract to be paid to the Subcontractor for the Subcontractor's performance of the Subcontract.
- 11.8** Except with the Authority's prior written approval, the Construction Manager shall not authorize advance payments to Suppliers for materials that have not been delivered to and properly stored at the Project Site.
- 11.9** In taking action on the Construction Manager's Application for Payment, the Authority and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Authority or Architect

have made a detailed examination, audit or arithmetic verification of the documentation submitted by the Construction Manager or other supporting data, that the Authority or Architect have made exhaustive or continuous on-site inspections, or that the Authority or Architect have made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid. If requested by the Authority, the Authority's accounting representative, acting in the sole interest of the Authority, will perform such examinations, audits and verifications.

- 11.10** The Construction Manager is required to certify that all amounts owed and requested under the Construction Manager Application for Payment are due to the Construction Manager, are accurate and correct, and that all of the Work completed to the date of the Construction Manager Application for Payment has been completed in accordance with the Contract Documents. The Construction Manager will be responsible for any errors or inaccuracies in the Construction Manager Application for Payment. The Construction Manager, and all Subcontractors or other Persons included for payment under the Construction Manager's Application for Payment, will be required to certify that there are no Claims outstanding for any of the Work completed to the date of the Construction Manager's Application for Payment except those Claims that are properly preserved in strict accordance with the Contract Documents.
- 11.11** Notwithstanding the provisions of **Paragraph 11.10** and notwithstanding the wording of such certificates, the Construction Manager shall ensure that each Subcontractor's Work is satisfactory and in good order pursuant to the Contract Documents pending the issuance of a final certificate of payment and the Construction Manager shall be responsible for ensuring that the correction of defects or Work not performed regardless of whether or not such defects were apparent when such certificates were issued

ARTICLE 12

FINAL PAYMENT

- 12.1** Final payment shall be made by the Authority to the Construction Manager when (1) the Construction Manager has achieved Final Completion, except for the Construction Manager's responsibility to correct defective or nonconforming Work, as provided in **Exhibit 6**, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Authority's accountants; and (3) a final Application for Payment has then been approved in writing by the Authority and the Architect. The Authority shall make such final payment, including any remaining retainage, if all of the Construction Manager's responsibilities have been satisfied (otherwise any remaining retainage shall be released upon satisfaction of all requirements) not more than ninety (90) days after approval by the Authority of the final Application for Payment, or as required by law. No final payment shall be issued until all final Contract Revisions have been issued and executed with each final Change Order and Construction Manager has provided the Authority with a detailed list of all Claims that are still unresolved at the time final payment is requested.
- 12.2** The amount of the final payment shall be calculated as follows:
- 12.2.1** Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the GMP.
- 12.2.2** Subtract amounts that the Authority withholds in accordance with the General Conditions or other provisions of the Contract Documents.
- 12.2.3** Subtract the aggregate of the previous payments made by the Authority, but not in excess of the GMP.
- 12.3** The Authority's accountants will review and report in writing on the Construction Manager's final accounting within ninety (90) days after delivery of the final Application for Payment to the Authority by the Construction Manager, or as required by law. Based upon such Cost of the Work as the Authority's accountants report to be substantiated by the Construction Manager's final accounting and provided the other conditions of **Paragraph 12.1** have been met, the Authority will, pursuant to **Paragraph 12.1**, process Final Payment, or notify the Construction Manager in writing within seven (7) days after receipt of the written report from the Authority's accountants the Authority's reasons for withholding Final Payment as provided in the Contract Documents.
- 12.4** If, subsequent to Final Payment and at the Authority's request, the Construction Manager incurs costs described as reimbursable in **Article 8** hereof and not required by Construction Manager's warranty obligations or excluded by **Article 9** hereof to correct defective or nonconforming Work, the Authority shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to Final Payment, but not in excess of the GMP.

ARTICLE 13

PROTECTION OF PERSONS AND PROPERTY

- 13.1** The Construction Manager acknowledges and understands that the Authority has established safety of all Project Participants and employees involved in the Project as one of the major priorities for this Project. The Construction Manager must emphasize the importance of safety and a safe working environment to all its employees and Subcontractors and Suppliers of all tiers. Project safety must never be compromised.
- 13.2** The Construction Manager understands and agrees that the Construction Manager shall be responsible for, and will initiate, maintain, and provide supervision of safety precautions and programs in connection with the performance of the Work. Furthermore, the Construction Manager agrees that the Construction Manager will be responsible to take all reasonable precautions for safety of, and to provide reasonable protection to prevent damage, injury, or loss to: (1) its employees on the Project and other Persons who may be affected thereby; (2) the Work and third party materials and equipment to be incorporated therein; (3) other property at or adjacent to the Project Site; and, (4) all Project Participants.
- 13.3** The Construction Manager is responsible for developing and administering a Project Safety Program for the Work that addresses, at a minimum, all of the requirements that will be developed in the Project Manual under Division 00800. The Construction Manager will be responsible for the performance and actions of all Persons, including all members of the Project Team, involved in the Work while present at the Project Site.

ARTICLE 14

CHANGES IN THE WORK

14.1 Construction Services

14.1.1 A Contract Revision related to the Work is a written order signed by the Authority and Construction Manager, and issued after execution of this Construction Services Agreement, authorizing a Change in the Work. The Contract Revision form that will be used on the Project will be developed and included as an amendment to **Exhibit 11** hereto. Costs to the Authority resulting from a Change in the Work shall be determined in writing between the Authority and the Construction Manager before issuance of any Contract Revision. The Construction Manager shall not proceed with any Changes in the Work without prior written authorization from the Authority. The Construction Manager agrees that it will not be paid for and waives any Claim for payment associated with any alleged Change in the Work or any Contract Revision unless the Construction Manager fully complies with the terms of this **Article 14** and the notice of Claims provision in **Exhibit 6** hereto. The Construction Manager further assumes any and all risks or liabilities associated with the Construction Manager proceeding with any alleged Change to the Work or any pending Contract Revision that is not administered in strict accordance with the Contract Documents.

14.1.2 A Change Order related to the Work is a written order signed by the Construction Manager and Subcontractor, and issued after execution of a Subcontract, authorizing a change in a Subcontract. Costs to the Authority resulting from a change in any Subcontract must be approved in accordance with **Subparagraph 14.1.1** hereof before issuance of any Change Order with a Subcontractor. The Construction Manager shall not proceed with any Changes in the Work, including the Work of any Subcontractor or Supplier, without prior written authorization from the Authority. The Construction Manager agrees that it will not be paid for and waive any Claim for payment associated with any alleged Change in the Work or any pending Change Order unless the Construction Manager fully complies with the terms of this **Article 14**. The Construction Manager further assumes any and all risks or liabilities associated with the Construction Manager proceeding with any alleged Change to the Work or pending Change Order that is not administered in strict accordance with the Contract Documents.

14.1.3 All Changes in the Work must be administered under the requirements of Division 1 of the Project Manual, which will be developed by the Authority and Architect.

14.1.4 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by the Authority. No Person is authorized on behalf of the Authority to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Construction Manager's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Construction Manager shall be limited to the specific matters stated in writing signed by the Authority, and shall not relieve Construction Manager of any other duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

14.2 Regulatory Changes

14.2.1 The Construction Manager shall be entitled to an equitable Contract Revision, where applicable, for Changes in the Work necessitated by the enactment or revisions to Applicable Laws, which may be enacted from time to time after the execution of this Construction Services Agreement. In such instances, if any, the Construction Manager shall provide the Authority, in writing, the justification for such Changes in the Work. At

the time of execution of this Construction Services Agreement, the Construction Manager is not aware of any regulatory changes that would necessitate a Change in the Work.

ARTICLE 15

CORRECTION OF WORK

- 15.1** The Construction Manager shall promptly give notice to the Authority and SDC Group of any defective or nonconforming Work of the Architect or Construction Manager discovered during the term of this Construction Services Agreement and within a period of two (2) years from the Date of Substantial Completion of the Work or designated portion thereof, or within such longer period provided by any applicable special or extended warranty.
- 15.2** The Construction Manager shall be responsible to promptly make corrections in the Work when the Construction Manager's Work is found to be damaged, defective, or nonconforming with the Contract Documents. Corrections to the Work that are not remedied within seven (7) days of delivery of a notice to the Construction Manager, or sooner if deemed necessary by the Authority to maintain sequencing of the Work or operation of any portion of the Project, may be completed by the Authority and back charged to the Construction Manager, including all costs of administering such Work without further notice to the Construction Manager. Construction Manager on its behalf and on behalf of its insurers, agents, and attorneys hereby waives any right to spoliation notice or right to be present during any work performed by the Authority pursuant to this provision. Costs associated with corrections of the Work shall be borne by the Construction Manager pursuant to **Paragraphs 8.1 and 8.2** and **Subparagraph 9.1.7** of this Construction Services Agreement.
- 15.3** The Construction Manager shall be responsible for all reasonable and direct costs of the Authority resulting from corrections in the Work for which Construction Manager is responsible and shall be further responsible for any Design Services which are caused or necessitated by errors, omissions, inconsistencies or other damages caused by the Construction Manager and for which the Construction Manager is responsible.

ARTICLE 16

INSURANCE, DISPUTE RESOLUTION, TERMINATION, AND INDEMNITY

16.1 Insurance

16.1.1 The Construction Manager shall be required to purchase and maintain, at its own expense, the insurance coverages described in the Contract Documents and as specifically set for in **Article 13** of **Exhibit 6** hereto. Certificates of the Construction Manager's insurance shall be made available to the Authority prior to execution of this Construction Services Agreement.

16.1.2 The Authority shall be responsible for purchasing and maintaining the insurance required under the Contract Documents and as specifically set forth in **Article 13** of **Exhibit 6** hereto. Certificates of the Authority's insurance shall be made available to the Construction Manager upon written request.

16.2 Dispute Resolution

16.2.1 Claims, disputes, and other matters in question between the Parties to this Construction Services Agreement or related to the Work and arising out of or relating to the formation or performance of this Construction Services Agreement or the Work shall be submitted and resolved as provided in **Paragraphs 6.2, 6.3 and 6.4** of **Exhibit 6** hereto.

16.2.2 **Subparagraph 16.2.1** hereof shall survive completion or termination of this Construction Services Agreement.

16.3 Termination by the Authority

16.3.1 As provided more fully in **Article 16** of **Exhibit 6** hereto, the Authority shall have the right to suspend, terminate for cause, or terminate for convenience this Construction Services Agreement.

16.4 Termination by the Construction Manager

16.4.1 The Construction Manager shall have the right to suspend its performance of the Work or terminate this Construction Services Agreement in accordance with **Article 16** of **Exhibit 6** hereto.

16.5 Indemnification

16.5.1 The Construction Manager is required to indemnify, hold harmless and defend the Authority and all of the Indemnitees as specifically set for in **Paragraph 4.18** of **Exhibit 6** hereto.

ARTICLE 17

OTHER PROVISIONS

17.1 Nondiscrimination

In connection with the performance of its Work, the Construction Manager agrees not to illegally discriminate against any employee or applicant for employment for any reason, including: age, race, sex, national origin, ancestry, religion, or color. This provision shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. Nothing contained in this **Paragraph 17.1** shall be considered a limitation of the Authority's rights of termination pursuant to **Paragraph 16.4** hereof.

17.2 Successors and Assigns

The Authority and Construction Manager each bind themselves, their partners, successors, permitted assigns, and legal representatives to the other Party to this Construction Services Agreement and to the partners, successors, permitted assigns, and legal representative of such other Party with respect to covenants of this Construction Services Agreement.

17.2.1 Notwithstanding anything to the contrary in this Construction Services Agreement, it is acknowledged and agreed that the Authority shall have the right to assign all its rights and duties under this Construction Services Agreement without the consent of Construction Manager to third parties including the Team. The Construction Manager shall execute all consents reasonably required to facilitate such assignment. This Construction Services Agreement may not be assigned by Construction Manager without the prior written approval of the Authority, which approval may be withheld in the Authority's sole discretion.

17.3 Legal Relations

Nothing contained in this Construction Services Agreement shall create or is intended to create a contractual relationship with, or a cause of action in favor of, any third party against the Authority or any of the Indemnitees. Notwithstanding the foregoing, the Parties hereto acknowledge and agree to the third party beneficiary rights in favor of the Authority established in **Paragraph 17.4** herein.

17.3.2 Should Construction Manager have a Claim against a Person involved with the Project, other than the Persons described in this **Paragraph 17.3**, then the Construction Manager shall make such Claim directly against such other Person and not against the Authority or any of the Indemnitees.

17.3.3 Construction Manager agrees and acknowledges that the Act requires the Authority to bid project construction in a manner that any cost overruns are the responsibility of the successful bidder and not the Authority or the State. Accordingly, Construction Manager agrees and acknowledges that as the successful bidder, Construction Manager is solely responsible for any cost overruns that may occur on the Project in excess of the GMP as modified by agreed upon Contract Revisions. Therefore, notwithstanding anything to the contrary in this Construction Services Agreement, to the fullest extent permitted by Applicable Law, Construction Manager hereby waives any and all Claims against Authority and any of the Indemnitees arising from or relating to (1) the Architect's negligent acts, errors or omissions; (2) any implied or express warranty as to the completeness, constructability, accuracy, suitability, or timeliness of the completion of any Drawings, Specifications, or other Contract Documents; and (3) any other Claim the result of which would be to impose liability upon the Authority for a cost overrun in violation of the Act. The Construction Manager hereby agrees that its sole and exclusive

remedy for any Claims arising out of the negligent acts, errors, or omissions of the Architect, the completeness, constructability, accuracy, suitability, or timeliness of the completion of any Drawings, Specifications, or other Contract Documents, or any implied or express warranties applicable by law to such documents, shall be a claim made directly against the Architect, the Architect's Subconsultants, or any insurer of a project specific insurance policy who may provide coverage for such claim, but only to the extent the Construction Manager is entitled to directly enforce the insurance policy.

17.3.4 The Construction Manager expressly acknowledges that it is an independent contractor and that it is not the representative or agent of the Authority or Team. Nothing contained in this Construction Services Agreement shall be construed as constituting a joint venture or partnership between the Construction Manager and the Authority or the Team. The Construction Manager shall have the authority to act on behalf of the Authority only to the extent expressly provided in this Construction Services Agreement unless otherwise modified by a subsequent written instrument. Under no circumstances shall Construction Manager contract, negotiate or make commitments concerning the Project with any Governmental Authority or other authority with jurisdiction over the Project without the Authority's prior written authorization. Construction Manager shall not order or direct any corrective work on the Project without the Authority's written authorization. The Construction Manager is not authorized to act on the Authority's behalf, and shall not act on the Authority's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid to any Project Participant or other Persons, or (2) the time for completing any portion of the Design Services or the Work as required and agreed to in this Construction Services Agreement or the Contract Documents, or (3) the scope of the Design Services or the Work, unless such representation is specifically provided for, set forth and authorized in this Construction Services Agreement. The Authority will not assume, accept or ratify any obligation, commitment, responsibility or liability which may result from representation by the Construction Manager not specifically provided for and authorized as stated in this Construction Services Agreement.

17.4 Third Party Beneficiaries

It is expressly agreed and understood that all of the Indemnities are intended third party beneficiaries of all the representations, warranties and covenants made by the Construction Manager in the Contract Documents, including without limitation the promises of the Construction Manager to perform and complete the Work. The rights of third party beneficiaries as described herein shall be consistent with the Contract Documents. The responsibilities and liabilities of the Construction Manager toward such third party beneficiaries shall be consistent with the Contract Documents.

17.5 Governing Law, Venue, and Jurisdiction

The laws of the State of Minnesota, without giving any effect to conflicts of law provisions, shall govern and construe this Construction Services Agreement. Each Party to this Construction Services Agreement (1) agrees that except for those Claims or disputes which are subject to dispute resolution requirements set forth in this Construction Services Agreement, any suit, action, or other legal proceeding arising out of this Construction Services Agreement, any related agreements, or any of the transactions contemplated hereby or thereby shall be brought in the courts of the State of Minnesota, Fourth Judicial District, Hennepin County District Court; (2) consents to the jurisdiction of such court in any such suit, action, or proceeding; and (3) waives any objection which it may have to the venue of any such suit, action, or proceeding in such court.

17.6 Time is of the Essence

Time is of the essence with respect to this Construction Services Agreement and the performance of obligations hereunder.

17.7 Lender Approval

The Construction Manager hereby acknowledges that the Authority may be required to provide this Construction Services Agreement to the Team's lender(s) for review and approval. The Construction Manager agrees to modify the terms and conditions of this Construction Services Agreement as may be reasonably requested by the Authority to satisfy the requirements of the Team's lender(s).

17.8 Construction Manager Performance

The Construction Manager understands and agrees that the Authority retains, at its choice, any and all rights under law and under this Construction Services Agreement, including injunctive relief, specific performance, and the right to recover actual direct, consequential, and incidental damages against the Construction Manager caused directly or indirectly by the Construction Manager's breach of the Construction Services Agreement; **provided, however**, that the Authority's rights to recover the Liquidated Damages as provided in **Paragraph 4.2** herein shall limit the Authority's and Team's rights to recover from the Construction Manager due to its unexcused failure to achieve the Date of Substantial Completion in the Construction Schedule.

17.9 Payment Bond

Pursuant to Minnesota Statutes §§ 574.26 - 574.32 and the Act, the Construction Manager is required to provide a Payment Bond in an amount equal to one-hundred percent (100%) of the GMP and in the form of **Exhibit 9** hereto and from a surety or sureties acceptable to the Authority. In the event the Construction Manager self performs any Work, that portion of the Work must still be 100% bonded, and a copy of the Construction Manager's Payment Bond will be provided and included within said **Exhibit 9**. If after the giving of the bond the GMP is increased, for any reason, the Authority may require additional bonds, the amount of which shall be not less than the amount of the increase in the GMP, and if the additional bonds are not furnished within ten (10) calendar days after demand, the Work shall cease until the additional bonds are furnished.

17.10 Performance Bond

Pursuant to Minnesota Statutes §§ 574.26 - 574.32 and the Act, the Construction Manager is required to provide a Performance Bond in an amount equal to one-hundred percent (100%) of the GMP and in the form of **Exhibit 9** hereto and from a surety or sureties acceptable to the Authority. In the event the Construction Manager self performs any Work, that portion of the Work must still be 100% bonded, and a copy of the Construction Manager's Performance Bond will be provided and included within said **Exhibit 9**. If after the giving of the bond the GMP is increased, for any reason, the Authority may require additional bonds, the amount of which shall be not less than the amount of the increase in the GMP, and if the additional bonds are not furnished within ten (10) calendar days after demand, the Work shall cease until the additional bonds are furnished.

17.11 Warranty of Construction

The Construction Manager's Warranty of Construction is included herein as **Exhibit 10**.

17.12 Environmental and Other Responsibilities During Construction

The Construction Manager is responsible to administer the Construction Manager’s Work in accordance with the Environmental and Other Responsibilities as outlined in **Exhibit 12** hereto.

17.13 Entire Agreement

This Construction Services Agreement represents the entire agreement between the Authority and Construction Manager and supersedes any prior negotiations, representations, promises, or agreements whether written or oral. This Construction Services Agreement may be amended only by written instrument signed by both Authority and the Construction Manager.

17.14 Notice Provisions

Every notice, demand, request, consent, approval, or other communication, including notice of breach, indemnity, suspension, termination, or default, that either Party hereto is required or desires to give or make to the other Party hereto shall, notwithstanding any other provisions of the Construction Services Agreement, be effective only if given in writing and delivered by hand and receipted for, or by registered or certified mail, postage-prepaid, return receipt requested, or by overnight mail as follows:

17.14.1 If to the Construction Manager, addressed to:

[INSERT]

with a copy to: [INSERT]

17.14.2 If to the Authority, addressed to:

Metropolitan Sports Facility Authorities
900 South Fifth Street
Minneapolis, MN 55415
Attention: Ted Mondale
CEO/Executive Director
Fax: 612-332-8334

with a copy to: Dorsey & Whitney, LLP
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402-1498
Attention: Jay L. Lindgren
Fax: 612-340-2868

with a copy to: Fabyanske, Westra, Hart & Thomson, PA
800 LaSalle Avenue, Suite 1900
Minneapolis, MN 55402
Attention: Dean B. Thomson
Fax: 612-359-7602

with a copy to: Minnesota Vikings Football, LLC

9520 Viking Drive
Eden Prairie, MN 55344
Attention: Kevin Warren
Vice President of Legal Affairs &
Chief Administrative Officer
Fax No.: 952-828-6514

with a copy to: Briggs and Morgan
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Attention: Brian Wenger, Mike Grimes, and
Matt Slaven
Fax No.: 612-977-8650

Or to such other address or addresses or via other means as Authority and Construction Manager shall from time to time designate by written agreement and notice given and delivered as aforesaid.

- 17.15** The Construction Manager shall cooperate with efforts made by the Authority and other members of the Project Team to ensure that, to the extent practicable, steel used in the construction of the Stadium is American-made steel that is made from Minnesota iron ore. To the extent practicable, the Construction Manager shall ensure that twenty five percent (25%) of other materials, supplies, and equipment used in the construction of the Stadium and Stadium Infrastructure are made or produced by Minnesota businesses.
- 17.16** Construction Manager agrees and acknowledges that the Project is a public project and the Project will be used for public purposes and all of the Work hereunder is in furtherance of a public project.
- 17.17** The Construction Manager shall cooperate with efforts made by the Authority and other members of the Project Team to build the Stadium, to the extent practicable, so that it is eligible to receive the Leadership in Energy and Environmental Design (LEED) certification or the Green Building Initiatives Green Globes certification for environmental design.
- 17.18** In the event that upon Final Completion of the Work the total Cost of the Work, plus the Construction Manager's Fee for Construction Phase Services, plus the Construction Manager's stipulated lump sum Fee for Pre-Construction Phase Services, is less than the final GMP, as adjusted during the Project by applicable Contract Revisions, including any Contract Revisions which reduce the Construction Manager's Contingency pursuant to **Section 6** of **Exhibit 3** hereof, then the GMP shall be reduced by the amount of said savings and (1) half of the savings shall be paid to the Construction Manager; and (2) the other half of the savings shall be paid to the State for transfer to the Authority for capital reserves.
- 17.19** This Construction Services Agreement may be executed by the Authority and Construction Manager separately in counterparts which, taken together, shall constitute one original. This Construction Services Agreement may also be executed by signatures sent by facsimile or email (in .pdf format), or by electronic signatures, which shall be deemed to have the same force and effect as an original signature.
- 17.20** The Construction Manager shall comply with prevailing wage requirements under Minn. Stat. §§ 177.41 to 177.43 or as otherwise required by the Contract Documents or Applicable Laws.
- 17.21** The Construction Manager shall keep strictly confidential all Confidential Information concerning and relating to the Project, in accordance with the requirements set forth in **Exhibit 6** hereto. The Construction Manager, its officers, agents, owners, partners, employees, volunteers, and

Subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13 (the “**MGDPA**”) and all other Applicable Laws relating to data privacy or confidentiality, and as any of the same may be amended. The Construction Manager agrees to defend, indemnify, and hold harmless the Indemnitees from and against any claims resulting from the unlawful disclosure and/or use of such protected data by the Construction Manager or the officers, agents, owners, partners, employees, volunteers, assignees, or Subcontractors of the Construction Manager, or other noncompliance with the requirements of this **Paragraph 17.23**. The Construction Manager agrees to promptly notify the Authority and Team if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA. The terms of this **Paragraph 17.23** shall survive the cancellation, suspension or termination of this Construction Services Agreement.

- 17.22** To the extent practicable, the Construction Manager will hire up to ten (10) current Authority maintenance employees during the Construction Phase of the Project to function as security, watch persons, and clean up workers for the Stadium Site.
- 17.23 Design/Build Option.** The Construction Manager acknowledges and agrees that the Authority, at its sole discretion, may elect to convert this Construction Services Agreement to a design/build delivery system on terms mutually agreeable to the Authority and Construction Manager.

[THIS SPACE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOW]

THIS CONSTRUCTION SERVICES AGREEMENT is entered into as of the day and year first written above.

AUTHORITY:

By: Michele Kelm-Helgen
Title: Its Chair

AUTHORITY:

By: Ted Mondale
Title: Its Executive Director

CONSTRUCTION MANAGER:

By:
Title:

EXHIBIT 1
DESCRIPTION OF BASIC SERVICES

The following Description of Basic Services is included in the Construction Services Agreement as **Exhibit 1**:

The Basic Services to be provided by the Construction Manager and its Subcontractors, Suppliers, consultants and subconsultants of any tier and associated with the Construction Manager's Work for the Project are described below, without limitation and will be performed by the Construction Manager in accordance with the terms and conditions of the Construction Services Agreement.

It is the intention of this Construction Services Agreement that the Construction Manager shall provide all work, services, labor, materials, and equipment to complete the Project in accordance with this Construction Services Agreement, including the Construction Documents and all applicable legal requirements. The Services required to deliver the Project in such form include the following, all of which shall be Basic Services under this Construction Services Agreement.

RESPONSIBILITIES

1.1 CONSTRUCTION MANAGER'S BASIC SERVICES

- 1.1.1** The Construction Manager's Basic Services consist of those services performed by the Construction Manager, Construction Manager's employees, and Construction Manager's Subcontractors, Suppliers, consultants, and subconsultants at any tier. This description of Basic Services ("**Basic Services**") is intended to provide a general description of the Construction Manager's Basic Services but shall not in any way be considered a limitation of the services or the responsibilities of the Construction Manager.
- 1.1.2** The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Construction Services Agreement in an expeditious and economical manner consistent with the interests of the Authority.

SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

2.1 DEFINITION

- 2.1.1** The Construction Manager's Basic Services consist of those activities described in **Article 2** of the Construction Services Agreement and all services identified herein.

2.2 PRE-CONSTRUCTION PHASE

- 2.2.1** The Construction Manager shall review the Program furnished by the Authority to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Authority.
- 2.2.2** The Construction Manager shall provide a preliminary evaluation of the Authority's Program, schedule and construction budget requirements, each in terms of the other.
- 2.2.3** Based on the Design Documents and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of Construction Cost for Program requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems.

- 2.2.4** The Construction Manager shall be responsible to notify the Authority when the Design Documents being developed by the Architect deviate from the Authority's Fixed Construction Budget and/or the Master Project Schedule. The Fixed Construction Budget shall be evaluated in summary and in particular line items. The Construction Manager shall provide the Authority with detailed value engineering evaluations and recommendations to modify the Project design and Design Documents to correspond to the Fixed Construction Budget and Master Project Schedule.
- 2.2.5** The Construction Manager shall expeditiously review Design Documents during their development and advise on proposed site use and improvements, selection of means, methods, materials, building systems and equipment, and methods of Project delivery. The Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost and schedule including, but not limited to, costs of alternative designs or materials, preliminary budgets, sequencing and schedule and possible economies.
- 2.2.6** The Construction Manager shall prepare and periodically update a Construction Schedule for the Authority's review and approval. The Construction Manager shall obtain the Architect's input and approval for the portion of the Construction Schedule relating to the performance of the Architect's services. In the Construction Schedule, the Construction Manager shall identify, coordinate, and integrate the Construction Manager's Services, the Design Services, Trade Contractor Work, Vendor Work, and the Authority's responsibilities with anticipated construction schedules, highlighting critical and long lead-time items. The Construction Schedule must identify and provide adequate time for Authority reviews and approvals. The Construction Manager is responsible to coordinate its Work with the Design Services and in accordance with the Construction Schedule to avoid any delays in completion of the Work in accordance with the Master Project Schedule. The Construction Schedule shall provide for the components of the Construction Manager's Work, including phasing of construction, times of commencement and completion required of each Subcontractor ordering and delivery of products requiring long lead time, and the occupancy requirements of the Authority.
- 2.2.7** As the Architect progresses with the preparation of the Design Documents, the Construction Manager shall prepare and update, at 50% Schematic Design, final Schematic Design, 50% Design Development Documents, and final Design Development Documents, estimates of Construction Cost of increasing detail and refinement. The estimated cost for each Division of the Work shall be indicated with supporting detail. Such estimates shall be provided for the Authority's review and approval. The Construction Manager shall advise the Authority if it appears that the Construction Cost may exceed the latest approved Fixed Construction Budget and make recommendations for corrective action.
- 2.2.8** The Construction Manager shall consult with the Authority and Architect regarding the Design Documents as they are being developed and make recommendations whenever design decisions or details adversely affect constructability, cost and schedules.
- 2.2.9** The Construction Manager shall provide recommendations and information to the Authority regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Subcontractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Construction Documents.
- 2.2.10** The Construction Manager shall prepare and manage a comprehensive safety program in compliance with workplace safety regulations and all other federal, state or local rules

and regulations to be administered by the Construction Manager for all activities at the Project Site. The Construction Manager shall be responsible to enforce the safety program with all Subcontractors, Suppliers, Trade Contractors and Vendors of all tiers.

- 2.2.11** The Construction Manager shall advise on the division of the Project into individual Subcontractors for various categories of Work, including the method to be used for selecting Subcontractors and awarding Subcontracts. The Construction Manager shall review the Contract Documents and make recommendations as required to provide and ensure that (1) the Work of the Subcontractors, Suppliers, Trade Contractors, and Vendors is coordinated, (2) all requirements for the Construction Manager's Work have been assigned to either the Construction Manager or the appropriate Subcontractor or Supplier, (3) the Contract Documents are complete and in sufficient detail for bidding and award of Subcontracts and the Construction Documents are representative of the full and complete scope of the Work, (4) the likelihood of jurisdictional disputes has been minimized, and (5) proper coordination has been provided for phased construction.
- 2.2.12** The Construction Manager shall review the Design Documents as they are being prepared by the Architect to determine that they are complete and include all necessary detail and information to secure competitive bids so that all Phases of the Work can be completed within the Fixed Construction Budget.
- 2.2.13** The Construction Manager shall provide the current Construction Schedule for each set of bidding documents.
- 2.2.14** The Construction Manager shall expedite and coordinate the ordering and delivery of materials requiring long lead time.
- 2.2.15** The Construction Manager shall assist the Authority in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project. The Construction Manager shall be responsible for surveying necessary for the proper performance of the Work.
- 2.2.16** The Construction Manager shall provide an analysis of the types and quantities of labor required for the Work and review the availability of appropriate categories of labor required for critical Phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.
- 2.2.17** The Construction Manager shall be responsible to comply with requirements for equal employment opportunity programs and Targeted Business and workforce utilization plans applicable to the Project in accordance with the Authority's requirements.
- 2.2.18** Following the Authority's review of the final Design Development Documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Construction Schedule for the Authority's review and approval.
- 2.2.19** The Construction Manager shall submit the list of prospective bidders for all Phases of the Work for the Authority's review and approval.
- 2.2.20** The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules and qualification procedures. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.
- 2.2.21** The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Authority for the award of Subcontracts or rejection of bids. The Construction Manager shall prepare detailed bid summaries in a format acceptable to the

Authority describing the proposed bids, exclusions to the bids and proposed alternates or substitutions.

- 2.2.22 The Construction Manager shall prepare Subcontracts and advise the Authority on the acceptability of Subcontractors and material suppliers proposed by Subcontractors.
- 2.2.23 The Construction Manager shall obtain building permits and special permits for the Work, except for permits required to be obtained directly by the various Subcontractors. The Construction Manager shall verify that the Authority has paid applicable fees and assessments. The Construction Manager shall assist the Authority and Architect in connection with the Authority's responsibility for filing documents required for the approvals of Governmental Authorities having jurisdiction over the Project. The Authority shall pay directly for primary building permit(s). Construction Manager shall include in the Cost of the Work costs for all other permits, licenses and inspections.
- 2.2.24 The Construction Manager shall provide the Authority with a detailed Construction Management Plan upon completing the Pre-Construction Phase Services in this **Paragraph 2.2** that describes in detail the Construction Manager's approach to the construction of the Project. The Construction Management Plan will include: (1) Proposed GMP and Detailed Construction Cost Estimates, (2) Subcontractor Bids and Proposals, (3) Summary of Construction Documents, (4) Cost Control Procedures, (5) Construction Schedule, (6) Communication and Document Control Procedures.

2.3 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

- 2.3.1 The Construction Phase Services will commence upon the Authority accepting the Construction Manager's Construction Management Plan and a certified GMP and completion date for final completion of the Work. The Authority may require that the GMP be separated into two (2) or more separate sums and be tracked separately throughout the course of the Project.
- 2.3.2 The Construction Manager shall provide administration, management, and related services to coordinate the scheduled activities and responsibilities of the Subcontractors, Trade Contractors, and Vendors with each other and with those of the Construction Manager, Trade Contractors, Vendors, the Authority, and Architect to manage the Project in accordance with the GMP, the Construction Schedule, and the Contract Documents.
- 2.3.3 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, and scheduling. The Construction Manager shall prepare and promptly distribute minutes to the Authority, Architect, Subcontractors, Trade Contractors, and Vendors.
- 2.3.4 Utilizing the construction schedules provided by the Subcontractors, Trade Contractors, and Vendors for informational purposes only, the Construction Manager shall update the Construction Schedule incorporating the activities of all Subcontractors, Trade Contractors, and Vendors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Project Data, and Samples, and delivery of products requiring long lead time and procurement. The Construction Schedule shall include the Authority's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Construction Schedule as required, but no less than monthly, to show current conditions. If an update indicates that the previously approved Construction Schedule may not be met, the Construction Manager shall recommend corrective action to the Authority.

- 2.3.5** Consistent with the various bidding documents and utilizing input and information from the Subcontractors for informational purposes only, the Construction Manager shall be responsible to coordinate the sequence of construction and assignments of responsibilities and space in areas where the Subcontractors are performing Work. The Construction Manager shall be responsible for the means, methods, materials, sequencing, and techniques used in construction.
- 2.3.6** The Construction Manager shall be responsible for the satisfactory performance of each Subcontractor.
- 2.3.7** The Construction Manager shall monitor the approved Cost of the Work and GMP in a format acceptable to the Authority. The Construction Manager shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.
- 2.3.8** The Construction Manager shall develop a Cost Control Report for the review and approval of the Authority. The Cost Control Report will provide cash flow reports and forecasts for the Project and advise the Authority as to variances between actual and budgeted or estimated Costs of the Work.
- 2.3.9** The Construction Manager shall maintain accounting records on the Work performed by the Construction Manager and Subcontractors on the basis of contract amounts and/or actual Costs of the Work. The Construction Manager shall also review accounting records related to the Trade Contractor Work and Vendor Work and shall assist the Authority to account for the costs of the Trade Contractor Work or Vendor Work, where a Trade Contract or Vendor Contract is based on a guaranteed maximum price or other cost-reimbursable terms.
- 2.3.10** The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Subcontractors for progress and final payments. The Construction Manager shall develop the project accounting procedures in accordance with the requirements set forth by the Authority.
- .1** Based on the Construction Manager's inspections and evaluations of each Subcontractor's Application for Payment, the Construction Manager shall review and certify the amounts due the respective Subcontractors.
 - .2** The Construction Manager shall prepare a complete Application for Payment based on Subcontractors' Applications for Payment. The Authority shall have the right to accept or reject a Subcontractor's Application for Payment in order to obtain properly allocated and manageable Subcontractor Application for Payments.
 - .3** The Construction Manager's Application for Payment shall constitute a representation to the Authority, based on the Construction Manager's determinations and inspections at the Project Site as provided herein and on the data comprising the Subcontractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Construction Manager's Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor

deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of the Construction Manager's Application for Payment shall further constitute a representation by the Construction Manager that the Subcontractor's Work is complete for that Phase and in conformance with the Contract Documents and that the Subcontractors are entitled to payment in the amount certified. The Construction Manager shall provide the Authority with a full Lien Waiver for costs included with each Application for Payment.

.4 The issuance of an Application for Payment shall be a representation that the Construction Manager has (1) made continuous on-site inspections to check the quality and quantity of the Work, (2) reviewed construction means, methods, materials, techniques, sequences, and procedures for the Subcontractors' Work, (3) reviewed copies of requisitions received from Subcontractors and Suppliers and other data requested by the Authority to substantiate the Subcontractor's right to payment, (4) confirmed that Subcontractors have properly applied and accounted for payments previously made, and (5) there are no outstanding Claims by the Construction Manager or its Subcontractors, for which the Authority has not previously received written notice according to the requirements of the Construction Services Agreement.

2.3.11 The Construction Manager shall review the safety programs developed by each of the Subcontractors for coordination with the safety program administered by the Construction Manager.

2.3.12 The Construction Manager shall determine that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and shall guard the Authority against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the Authority, to require additional 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. The Construction Manager shall not permit Work that does not conform to the requirements of the Contract Documents.

2.3.13 The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Construction Schedule.

2.3.14 The Construction Manager shall transmit to the Architect requests for interpretations of the meaning and intent of the Drawings and Specifications in the form of a request for information ("**RFI**"), and assist in the resolution of questions that may arise.

2.3.15 The Construction Manager shall review requests for Changes or Change Orders, assist in negotiating Subcontractor proposals, submit recommendations to the Authority, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the Architect's modifications to the Construction Documents.

2.3.16 The Construction Manager shall assist the Authority in the review, evaluation and documentation of Claims.

2.3.17 The Construction Manager is responsible to administer all insurance requirements of the Construction Manager and Subcontractors involved in the performance of the Work. The Construction Manager shall be responsible to verify and administer insurance requirements for all aspects of construction.

- 2.3.18** In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples, and other submittals. The Construction Manager shall review and approve all Shop Drawings, Product Data, Samples, and other submittals from the Subcontractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect those that have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Authority or Subcontractors.
- 2.3.19** The Construction Manager shall record the progress of the Work. The Construction Manager shall submit written progress reports to the Authority at least once a month including information on each Subcontractor's Work, as well as the entire Project, showing percentages of completion. The Construction Manager shall keep and transmit to Authority a daily log containing a record of weather, each Subcontractor's Work on the Project Site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Authority may require.
- 2.3.20** The Construction Manager shall maintain at the Project Site for the Authority one record copy of all Subcontracts, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect upon completion of the Project shall deliver them to the Authority. The Construction Manager is responsible to prepare all As-Built Drawings for the Project in an electronic format acceptable to the Authority. The Construction Manager shall provide CADD based As-Built Drawings for any Work that was planned or detailed using CADD.
- 2.3.21** The Construction Manager shall arrange for the delivery, storage, installation, protection, and security of Authority-purchased materials, systems, and equipment that are a part of the Project.
- 2.3.22** With the Architect and the Authority's designated representative(s), the Construction Manager shall observe the Subcontractors' final testing and start-up of utilities, operational systems and equipment.
- 2.3.23** When the Construction Manager considers each Subcontractor's Work or a designated portion thereof substantially complete, the Construction Manager shall, jointly with the Subcontractor, prepare for the Authority a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Authority in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.
- 2.3.24** The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Subcontractors and make recommendations to the Authority when the Work is ready for final inspection. The Construction Manager shall assist the Authority in conducting final inspections.
- 2.3.25** The Construction Manager shall secure and transmit to the Authority warranties and similar submittals required by the Contract Documents for delivery to the Authority and deliver all keys, manuals, record drawings and maintenance stocks to the Authority. The

Construction Manager shall forward to the Authority a final Application for Payment upon compliance with the requirements of the Contract Documents.

- 2.3.26** Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Authority.

EXHIBIT 2
[RESERVED]

Exhibit 2 is reserved.

EXHIBIT 3
CONSTRUCTION MANAGEMENT PLAN INCLUDING CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE AND CONSTRUCTION SCHEDULE

This **Exhibit 3** constitutes the Construction Manager's Construction Management Plan in which the Construction Manager proposes and commits to a GMP to perform all the Work required in and by the Contract Documents not only as they currently exist, but also as they will be developed in the future by the Architect, Authority, and Team as the final Construction Documents are completed. This **Exhibit 3** also incorporates by reference the Construction Schedule by which the Construction Manager will perform the Work pursuant to critical Milestone Dates, the Date of Substantial Completion, and the Date of Final Completion. Once the Authority and Team accept and execute this **Exhibit 3** after it has been completed and executed by the Construction Manager, this **Exhibit 3** will become part of the Construction Services Agreement as a Contract Revision.

The GMP as set forth below is guaranteed by the Construction Manager in accordance with **Article 5** of this Construction Services Agreement:

1. GUARANTEED MAXIMUM PRICE (GMP)

The Construction Manager hereby certifies that it will complete the Work for an amount equal to or less than a guaranteed maximum price (GMP) of \$ [INSERT] Dollars.

2. COST OF THE WORK

The Cost of the Work are the costs to be reimbursed as described in **Paragraph 8.1** of the Construction Services Agreement.

3. CONSTRUCTION MANAGER FEE

The Construction Manager's Fee is described below in this **Exhibit 3**. The Authority and Construction Manager agree that the Construction Manager's Fee may be amended from time to time as mutually agreed to by the Authority and Construction Manager.

3.1 The Construction Manager's Fee is included as part of the GMP and is considered a Cost of the Work to be Reimbursed in accordance with **Subparagraph 8.1.1** of the Construction Services Agreement and as outlined below:

3.2 The Construction Manager's Fee for Construction Phase Services is \$[INSERT] Dollars. The Construction Manager's Fee is a capped amount. The Construction Manager has agreed to this fixed fee which shall not be increased or decreased for changes in the scope of the Work involving increases to the GMP; **provided, however,** that

.1 If the Authority assigns Trade Contracts or Vendor Contracts to the Construction Manager having a total value of \$_____ million, then the Construction Manager shall be entitled to an equitable adjustment to its Fee of ___ % of the value of the Trade Contracts or Vendor Contracts assigned in excess such amount. But, if the total value of the Trade Contracts or Vendor Contracts assigned to the Construction Manager is less than such amount, then the Construction Manager shall not be entitled to an increase of the Construction Manager's Fee.

- .2 If the Authority orders changes to the scope of the Work increasing the GMP by \$_____ million in aggregate, then the Construction Manager shall be entitled to an adjustment to its Fee of ___ % of the value of the increase in the GMP in excess of such amount. But, if the total aggregate value of the Changes in the Work are less than such amount, then the Construction Manager shall not be entitled to an increase of the Construction Manager's Fee.

4. GENERAL CONDITIONS

The GMP shall include an aggregate line item for Construction Manager's General Conditions which shall itself be a Guaranteed Maximum Price for that line item (the "General Conditions GMP" or "GCGMP"). The GCGMP is a capped amount of \$[INSERT AMOUNT] Dollars. These fixed General Conditions costs are guaranteed by the Construction Manager, and Construction Manager will not apply for payment for any Cost of the Work that it incurs in excess of the GCGMP or be entitled to any increase in the GCGMP except for the same reasons that would otherwise entitle Construction Manager to a Contract Revision under this Construction Services Agreement increasing the GMP. General Conditions include costs for the field office such as copies, fax machines, postage, computers, carts, office rent, office trailers, utilities, telephones, telephone service, cellular phones, office supplies, office furniture, security, radios, blueprinting, pest control, in-state transportation, out of state transportation, safety, first aid, temporary fencing, temporary barricades, cleaning, dumpsters, final cleaning, temporary roads, security, traffic control, bid advertisement, temporary toilets, street cleaning, sidewalk protection, temporary partitions, snow removal, general hoisting, base line/monument surveying, pre-construction surveying, pest controls and orientation/badging/drug testing program.

5. CONSTRUCTION MANAGER SELF PERFORMED WORK

If and when appropriate and as approved by the Authority and Team, the Construction Manager may be allowed to perform a portion of the Work with its own forces as provided pursuant to Exhibit 6 hereto, in which case the Construction Manager will provide either an agreed upon lump sum price ("Self Performed Lump Sum" or "SPLS") or a Guaranteed Maximum Price for that line item (the "Self Performed GMP" or "SPGMP"). Construction Manager will not apply for payment for any Cost of the Work that it incurs in excess of the SPLS or SPGMP or be entitled to any increase in the SPLS or SPGMP except for the same reasons that would otherwise entitle Construction Manager to a Contract Revision under this Agreement increasing the GMP.

6. CONSTRUCTION MANAGER CONTINGENCY

Construction Manager's GMP contains a Construction Manager Contingency to cover the risks inherent in providing a GMP for the Work. Construction Manager may not use the Construction Manager Contingency established for the GMP to fund any Cost of the Work applicable to and in excess of the GCGMP or SPGMP, if any; Construction Manager acknowledges that the GCGMP and the SPGMP each have their own contingencies that are already part of the GCGMP and SPGMP and that are separate from the Construction Manager Contingency. The Construction Manager's Contingency included in the GMP and as described below is \$[INSERT] Dollars or _____ percent (___%) of the GMP.

- 6.1 The Authority and Construction Manager acknowledge and agree that a fundamental premise of the Construction Services Agreement is to complete the Work in an amount that will not exceed the GMP. The Construction Manager acknowledges and agrees it has had adequate time to review the scope of the Project and the Work, the Project Site, existing conditions, market conditions, Contract Documents, and other conditions and factors that may impact the GMP. The Construction Manager acknowledges and agrees that the Construction Manager Contingency provides an adequate means of accounting for the foreseen and unforeseen costs associated with the completion of the Work including those additional costs required as a result of the completion of the final Construction Documents by the Architect.

- 6.2** The Construction Manager agrees and acknowledges that, as of the date that it executes this **Exhibit 3**, all the Design Documents necessary for the Work have not been finalized, but Construction Manager agrees that the GMP Pricing Documents are sufficiently complete to enable Construction Manager to guarantee and agree to perform its Work for the GMP based on the final Construction Documents that will be developed by the Architect. Construction Manager knows and understands the Program, understands that the GMP Pricing Documents are intended to satisfy the Program, and agrees that it can deliver the Work contemplated by the Program for the GMP based on the GMP Pricing Documents. In determining the GMP and Contract Time, the Construction Manager has taken into account the level of completeness of the GMP Pricing Documents and has exercised the best skill and efforts of the Construction Manager to make (1) all appropriate judgments and inferences about how the Documents will be completed as Construction Documents based on the Program and Applicable Law, and (2) all inquiries of and discussions with the Authority, Team, and Architect as necessary in the Construction Manager's judgment to clarify the content and intent of the GMP Pricing Documents and the expected and intended scope of the Construction Documents in order to reliably calculate and establish both the GMP and the Contract Time.
- 6.3** By executing this **Exhibit 3**, the Construction Manager agrees that the Contract Documents (including the GMP Pricing Documents), materials, and information furnished to the Construction Manager as of the date of the execution of said **Exhibit 3** and the ongoing discussions and meetings between the Construction Manager and the Authority, Team, and the Architect up to said execution have described the scope, construction requirements, and design intent of the Work in detail sufficient to enable the Construction Manager to certify the GMP and the Construction Schedule, including the Date of Substantial Completion. The Construction Manager shall not be permitted to claim any adjustment in either the GMP or Contract Time in connection with the completion of final Construction Documents, unless allowed pursuant to **Article 14**.
- 6.4** The purpose of the negotiated Construction Manager Contingency is to allow the Construction Manager to cover foreseen and unforeseen costs in the performance of the Pre-Construction Phase Services and Construction Phase Services and the Work for which the Construction Manager is not entitled to an increase in the GMP under this Agreement. The Construction Manager has assumed the risk hereunder that the Construction Manager Contingency is sufficient to cover these foreseen and unforeseen costs and, accordingly, the Construction Manager shall not be entitled to an increase in the GMP in the event that the Construction Manager incurs such costs in excess of the Construction Manager Contingency.
- 6.5** For illustrative purposes only, the Construction Manager acknowledges and agrees that the Construction Manager Contingency may be used by the Construction Manager, with approval of the Authority, to cover costs foreseen and unforeseen costs that could include the following:
- .1** costs associated with the completion of the Contract Documents, including clarifications in scope of the Contract Documents, by the Architect that may not have been anticipated when calculating the GMP;
 - .2** costs associated with the development or completion of Submittals that may not have been anticipated when calculating the GMP;
 - .3** finalization, clarification, and/or coordination of the Contract Documents consistent with the intent of the Authority;
 - .4** costs of any Construction Phase Services inadvertently omitted by the Construction Manager when calculating the GMP;

- .5 additional costs incurred as a result of the buyout of any Subcontractor in excess of the Schedule of Values;
 - .6 costs associated with default by a Subcontractor;
 - .7 costs related to changes in construction means and methods of construction;
 - .8 costs of the Construction Manager and other unanticipated costs or cost overruns in connection with the performance of the Work ;
 - .9 costs associated with accelerating or re-sequencing the Work as necessary to maintain the Construction Schedule; and
 - .10 any costs associated with price escalation in materials or labor rates.
- 6.6 The Construction Manager understands and agrees that according to the Act, the Authority's contribution to the GMP cannot exceed a certain amount and that the Authority can only accept financial obligations relating to cost overruns associated with the construction of the Project **provided that any cost overruns are the responsibility of the Construction Manager and not the Authority**; as a consequence, the Construction Manager agrees, represents, and warrants that the Construction Manager's Contingency is intended to cover any and all cost overruns arising out of or related to its performance of the Work and that the Construction Manager will not make any Claims for cost overruns as the risk of any such overruns are covered by and assumed in the Construction Manager's Contingency.
- 6.7 The Authority will continue to evaluate possible cost reduction opportunities that may provide additional money for the Construction Manager's Contingency. Such cost reduction opportunities and resulting decisions shall be at the sole and absolute discretion of the Authority. The Construction Manager's Schedule of Values must allocate all uncommitted costs to the Construction Manager Contingency. Any such cost reduction opportunities acceptable to the Authority will further fund the Construction Manager Contingency up to a maximum amount of \$[INSERT] Dollars. Any amount in excess of \$[INSERT] Dollars will be immediately deducted from the GMP by Contract Revision. The Construction Manager hereby agrees to release to the Authority amounts in the Construction Manager Contingency as follows:
- .1 100% of Construction Manager Contingency over [INSERT AMOUNT]% of the Cost of the Work on that date Forty-five (45) days after delivery by the Architect of the final Construction Documents; and
 - .2 100% of Construction Manager Contingency over [INSERT AMOUNT]% of the Cost of the Work on that date when Ninety Percent (90%) of the Work to be performed by Subcontractors has been awarded; and
 - .3 100% of Construction Manager Contingency over [INSERT AMOUNT]% of the Cost of the Work on that date when the superstructure has been completed; and
 - .4 100% of Construction Manager Contingency over [INSERT AMOUNT]% of the Cost of the Work at Substantial Completion (or earlier as agreed to by Authority and Construction Manager).

7. COMPENSATION ADJUSTMENTS

The Construction Manager's Fee shall be adjusted for Performance Compensation as follows:

The Construction Manager's Fee may be decreased as described below if the Construction Manager does not maintain the continuous involvement of the following personnel on the Project, as determined solely by the Authority, substantially in accordance with **Exhibit 5** hereto:

1. [INSERT]
2. [INSERT]
3. [INSERT]
4. [INSERT]

The decrease in Construction Manager Fee described above will not apply if the employees described above discontinue employment with the Construction Manager. The Authority shall have the absolute right to approve any replacement of key staff of the Construction Manager.

The Construction Manager will be compensated a performance fee as follows:

5. \$ [INSERT] Dollars in the sole and absolute discretion of the Authority based on the Construction Manager's performance. Performance will be evaluated based on final costs when compared against the initial GMP and the successful achievement of all Milestones Dates identified within **Subparagraph 4.2.1.6** of the Construction Services Agreement. This performance fee will only be considered if no liens, litigation, or arbitration proceedings exist at the conclusion of the Work. Additionally, this performance fee will be made with further reasonable consideration given to quality of construction, job-site safety, and the Construction Manager's ability to avoid Claims in completing the Work. In no event shall this performance fee exceed the outstanding balance of the Construction Contingency.
6. \$ [INSERT] Dollars if the Construction Manager completes the Work with zero lost time accidents on the jobsite.

8. ALLOWANCES

Allowances will be included in the GMP as described in **Attachment 1** to this **Exhibit 3**. Construction Manager represents that allowances are reasonably accurate cost estimates, but not guaranteed. The Guaranteed Maximum Price will be adjusted for any items as an allowance when the actual cost for each allowance item is determined. For items listed as allowances, where the allowance is greater than the actual Cost of the Work or where the allowance is less than the actual Cost of the Work, the Guaranteed Maximum Price will be decreased or increased respectively by the amount of the difference of some or all of the allowances in the aggregate, as applicable, through a Contract Revision. Any cost savings below the amounts of Allowances described above shall be returned to the Authority and not the Construction Manager Contingency. Before an allowance is exceeded, the Authority and Team shall be given written notice, and Owner and Construction Manager shall cooperate to explore options of obtaining the desired work for the allowance price.

9. ALTERNATES

Construction Manager has reviewed and developed pricing for the Alternates identified in **Attachment 2** of this **Exhibit 3**, and said Attachment shall identify the amount that shall be added to or deducted from the GMP if the Authority elects to make the changes described in the Alternates. **All requirements of the Specifications shall govern the Alternate Work, except as specifically modified herein. The Work required under the Alternates shall be complete, and the Construction Manager has included the work of all trades necessary to complete the Alternate Work**

10. UNIT PRICES

Unit prices, if any are set forth in the “Schedule of Unit Prices” attached hereto as **Attachment 3**, if applicable. Such unit prices are considered complete and include (1) all materials, equipment, labor, delivery, installation, overhead, and profit and (2) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which unit prices apply.

11. SCHEDULE OF VALUES

The Schedule of Values in **Attachment 4** to this **Exhibit 3** allocates the various portions of the Work and identifies the individual line items that have either been awarded as self-perform work or capped.:

12. CONSTRUCTION SCHEDULE

The Construction Schedule by which Construction Manager will perform the Work for the GMP is attached hereto as **Attachment 5**. The Construction Manager hereby certifies that it shall achieve Substantial Completion of the Work on or before [INSERT DATE]. The Construction Manager shall be deemed to have achieved Final Completion of the Work only upon the satisfactory completion of all the Work as described in the Contract Documents.

13. CONTRACT DOCUMENTS AND ASSUMPTIONS UPON WHICH THE GMP IS BASED

Attachment 6 to this **Exhibit 3** contains the Contract Documents upon which the GMP is based and is incorporated into this **Exhibit 3** for all purposes. **Attachment 7** to this **Exhibit 3** contains the Assumptions upon which the GMP is based and is incorporated into this **Exhibit 3** for all purposes.

This Exhibit 3 is Agreed to and Accepted as a Contract Revision to the Construction Services Agreement this _____, of _____, 2013 by and between:

The Minnesota Sports Facilities Authority

By: _____

Its: _____

The Minnesota Sports Facilities Authority

By: _____

Its: _____

The Construction Manager

By: _____

Its: _____

EXHIBIT 4
MASTER PROJECT SCHEDULE

The Construction Manager shall perform its Work expeditiously and consistent with its contractual obligations and Standard of Care to further the orderly progress of the Work. The Construction Manager's Pre-Construction Phase Services shall be commenced, subject to **Paragraph 2.3** of the Construction Services Agreement, on the date hereof, and, subject to authorized adjustments and excusable delays as allowed by **Paragraph 4.3**, Construction Manager shall achieve Project Milestone Dates and Substantial Completion in accordance with this **Exhibit 4** of this Construction Services Agreement.

Final Completion of the Work shall be deemed to have occurred only after completion of all the Work and acceptance of it by the Authority and Architect.

The Date of Substantial Completion is described in more detail below:

Substantial Completion

[INSERT]

Project Milestones Dates of the Work that must be complete in accordance herewith are outlined on the Outline of Construction Schedule below.

The following Outline of Construction Schedule highlights critical components of the Project and mandatory Milestone Dates that must be completed, without exception, by the Construction Manager in order to meet the requirements of the Construction Schedule and Substantial Completion. The Parties hereto acknowledge and agree, in accordance with **Paragraph 4.10** of the Construction Services Agreement, that the Construction Manager will undertake Extraordinary Measures if the Authority determines that Construction Manager is unlikely to achieve the Project Milestone Dates as described below.

OUTLINE OF CONSTRUCTION SCHEDULE

PROJECT MILESTONE ACTIVITIES

COMPLETION DATE

[INSERT]

[INSERT]

EXHIBIT 5
PROJECT STAFFING

The following Project Staffing diagram is included in this Construction Services Agreement as **Exhibit 5**.

[INSERT PROJECT STAFFING DIAGRAM, INCLUDING KEY PERSONNEL]

EXHIBIT 6
GENERAL CONDITIONS OF THE CONTRACTS FOR CONSTRUCTION

The following General Conditions of the Contracts for Construction is included in this Construction Services Agreement as **Exhibit 6**:

EXHIBIT 7
[RESERVED]

Exhibit 7 is reserved.

EXHIBIT 8
CONSTRUCTION MANAGER PARENT OR JOINT VENTURE COMPANY GUARANTY

The following Construction Manager Parent or Joint Venture Company Guaranty is included in this Construction Services Agreement as **Exhibit 8**:

Reference is made to that certain Construction Services Agreement dated _____, as amended and modified from time to time (“**Construction Services Agreement**”), between _____ (“_____”) and the Minnesota Sports Facilities Authority (“**Authority**”), which Agreement provides for the construction of a professional sports Stadium and Stadium Infrastructure in Minneapolis, Minnesota. _____ is an Affiliate or Joint Venture Partner of _____ (“**Guarantor**”), and Guarantor has an interest in the completion of the Agreement.

In consideration of the Construction Services Agreement, and such other and further good and valuable consideration, receipt of which Guarantor acknowledges, Guarantor hereby undertakes and guarantees to the Authority that _____ will fulfill its obligations to the Authority under the Construction Services Agreement and, if _____ does not do so, Guarantor hereby declares that it will perform those obligations as though they were its own, it being explicitly understood and agreed, however, that, notwithstanding any other provision contained in this Guarantee or at law or otherwise, under no circumstances shall Guarantor’s liability or obligations hereunder exceed or be different from the liability or obligations of _____ under the Construction Services Agreement and that Guarantor’s liability hereunder shall only become effective if, and to the extent that _____ has not fulfilled its obligations under the Construction Services Agreement.

Guarantor agrees that its liability under this Guarantee shall not be affected by any amendment, modification (including but not limited to Contract Revisions or Change Orders), extension or waiver of any of the terms of the Construction Services Agreement and that Guarantor’s liability hereunder shall apply to the Agreement as so amended, modified, or extended.

Guarantor agrees that its obligations under this Guarantee are irrevocable, independent and continuing, subject to the conditions and limitations stated herein and in the Construction Services Agreement. Subject to the provisions hereof, Guarantor shall satisfy its obligations hereunder in a timely manner in accordance with the obligations of _____ under the Construction Services Agreement after demand therefor is properly made in writing by the Authority, and such demand shall be conclusively deemed to have been effectually made if made, with necessary modification, in accordance with the notice provisions contained herein.

This Guarantee shall inure to the benefit of the Authority, its successors, and assigns and shall be binding upon Guarantor and its permitted successors and assigns. Nothing in this Guarantee, whether expressed or implied, is intended to confer upon any person other than the Authority and Guarantor, and their permitted successors and assigns, any rights or remedies of any nature or kind whatsoever. Guarantor shall not assign this Guarantee or its rights or obligations hereunder, whether by operation of law or otherwise, without the Authority’s prior written consent.

Any notice, demand, document or other communication required or permitted to be given herein shall be in writing and shall be sufficiently given if delivered to the applicable Party at its address below, or if sent by international express mail or facsimile, addressed as follows:

To Authority:

Attention: _____

Facsimile: _____

With a copy to:

Attention: _____

Facsimile: _____

To Guarantor:

Attention: _____

Facsimile: _____

With a copy to:

Attention: _____

Facsimile: _____

Any such notice, if mailed, shall be deemed to have been given on the third day following such mailing or, if delivered, shall be effective on the day of delivery. Any notice sent by facsimile shall be deemed to have been given on the business day next following the date of transmission. For the purposes hereof, a "business day" shall be a day other than Saturday or Sunday and which is neither a statutory nor civil holiday in the state or province or country of the addressee. Each of the Authority and Guarantor shall be entitled to specify a different address by giving notice in accordance with the terms hereof to the other.

This Guarantee shall be governed by and construed in accordance with the same laws and definitions of terms that are applicable to the Construction Services Agreement. For the purpose of this Guarantee, but for no further purpose, Guarantor hereby agrees to dispute resolution as more specifically provided for by the Agreement.

By: _____

Its: _____

Date: _____

MINNESOTA SPORTS FACILITIES AUTHORITY

By: _____

Its: _____

Date: _____

MINNESOTA SPORTS FACILITIES AUTHORITY

By: _____

Its: _____

Date: _____

EXHIBIT 9
CONSTRUCTION MANAGER'S BONDS

The Payment and Performance Bond forms that the Construction Manager is required to provide are included in this Construction Services Agreement as **Exhibit 9**:

[INSERT]

EXHIBIT 10
CONSTRUCTION MANAGER'S WARRANTY

The following Construction Manager's Warranty is included in this Construction Services Agreement as **Exhibit 10**:

CONSTRUCTION MANAGER'S WARRANTY OF CONSTRUCTION

Pursuant to the Construction Services Agreement between the Minnesota Sports Facilities Authority (“**Authority**”) and [INSERT] (“**Construction Manager**”), Construction Manager hereby warrants and guarantees that all of the Work performed under the Construction Services Agreement will be of new and of good quality, will be free of defects except for those inherent in the quality of the Work allowed by the Contract Documents, and will conform to the requirements of the Contract Documents. If the Work does not conform to this warranty, it shall be considered defective, and Construction Manager shall remedy at its own expense any such defective Work (including the costs that the Authority or Architect incur in dealing with or as a result of the defective Work) so that the Work conforms to the Contract Documents. The Construction Manager's warranty shall extend for a period of two (2) year after final acceptance by Authority. Where guarantees or warranties are required in the Contract Documents for a period of more than two (2) years, such longer terms shall apply. All Suppliers' warranties and guarantees, express or implied, respecting any part of the Work and any materials used therein are hereby assigned by the Construction Manager to the Authority. This Warranty of Construction shall supplement, and not supersede, warranties and guarantees given by Construction Manager under the terms of the Contract Documents.

WITNESS: _____

THE STATE OF _____
COUNTY OF _____

CONSTRUCTION MANAGER:
[INSERT]

Title: _____
Date: _____

BEFORE ME, the undersigned authority, on this day, personally appeared _____ known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ___day of _____, 20__.

NOTARY PUBLIC

SEAL

MY TERM EXPIRES

EXHIBIT 11
CONTRACT REVISION AND CHANGE ORDER FORMS

Forms that Construction Manager must use to request Contract Revisions and Change Orders will be added to the Construction Services Agreement in this **Exhibit 11**.

EXHIBIT 12
ENVIRONMENTAL AND OTHER RESPONSIBILITIES DURING CONSTRUCTION

The Construction Manager is responsible to administer and perform the Work in accordance with the Environmental and Other Responsibilities During Construction as outlined in this is included in this **Exhibit 12**:

[INSERT]

EXHIBIT 6

**GENERAL CONDITIONS OF THE CONSTRUCTION SERVICES
AGREEMENT BETWEEN AUTHORITY AND CONSTRUCTION MANAGER**

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EXHIBIT 6

GENERAL CONDITIONS OF THE CONSTRUCTION SERVICES AGREEMENT BETWEEN AUTHORITY AND CONSTRUCTION MANAGER

The General Conditions of the Construction Services Agreement between the Authority and the Construction Manager are included herein as **Exhibit 6**:

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 Definitions included in the Construction Services Agreement are included as **Appendix A**.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 Execution of the Construction Services Agreement by the Construction Manager is a representation that the Construction Manager has visited the Project Site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Construction Manager and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including (1) the location and layout of the Project Site, (2) prevailing climatic conditions, (3) anticipated labor supply and costs, (4) market conditions that will impact the Guaranteed Maximum Price, (5) the requirement that the Construction Manager has completed a thorough and comprehensive review of the Contract Documents and understands and recognizes the complete scope of the Work, (6) existing conditions that will impact the Work, and (7) availability and cost of materials, tools, and equipment. The Construction Manager shall be solely responsible for providing a safe place for the performance of the Work. The Authority shall not be required to make any adjustment in either the Guaranteed Maximum Price or Contract Time in connection with any failure by the Construction Manager to comply with the requirements of this **Subparagraph 1.2.1**.

1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. Execution of the Construction Services Agreement by the Construction Manager is an express and unqualified representation (1) that the Construction Manager understands the intent stated herein with respect to the Pre-Construction Phase Services, and (2) the Construction Manager's execution of a Contract Revision, including the Construction Management Plan in **Exhibit 3** of the Construction Services Agreement shall be an express and unqualified representation that the Construction Manager understands the intent stated herein and therein and (3) that the Contract Documents represent a full and complete definition of the Work in order to meet the Authority's objective of including all items necessary for the proper execution and completion of the Work by the Construction Manager for not more than the Guaranteed Maximum Price or Contract Time. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Construction Manager shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and Applicable Laws and NFL Rules and Regulations, the Construction Manager shall (1) provide the better quality or greater quantity of the Work or (2) comply with the more stringent requirement, either or both in accordance with the Authority's reasonable interpretation. In general, the following rules of interpretation shall apply:

- .1 On the Drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings. Drawings are intended to show the general arrangement, design and extent of the Work, and are partly diagrammatic; they are not intended to be scaled for roughing in measurements, or to serve as Shop Drawings.
- .2 Before ordering any materials or doing any Work, the Construction Manager shall verify all existing conditions and measurements at the Project Site and shall be responsible for the correctness of such measurements. Any difference that may be found shall be submitted to the Architect for interpretation before proceeding with the Work.
- .3 If a minor change in the Work is found necessary due to actual field conditions, the Construction Manager shall so advise the Architect who shall issue detailed drawings of such before making the change.

1.2.3 Organization of the Specifications into Divisions, Sections and Articles, and arrangement of Drawings shall not control the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Titles to Specification Divisions, Sections, and Paragraphs in the Contract Documents are for convenience only and shall not be taken

as a part of the Specifications or as a correct and complete segregation of the several units of the Work. No responsibility, either direct or implied, is assumed by the Authority for omissions or duplications by Construction Manager or its Subcontractors, due to real or alleged error in the arrangement of matters or numbering of the Contract Documents. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, on the condition that such items are provided and finished as specified. If necessary, such Work shall be performed on the Project Site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

1.2.4 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meaning.

- .1** Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other association standard, the Construction Manager shall present an affidavit from Construction Manager and the manufacturer, when requested by the Architect or required in the Specifications, certifying that the product complies with the particular standard or Specification. When requested by the Architect or when specified, support test data shall be submitted to substantiate compliance.
- .2** Whenever a product is specified or shown by describing proprietary items, model number, catalog number, manufacturer, trade names, or similar reference, no substitutions may be made unless authorized in writing by the Architect and the Authority prior to execution of the Construction Services Agreement or if accepted as a Contract Revision to the Construction Services Agreement. When two (2) or more products are shown or specified, the Construction Manager has the option to use any of those shown or specified.

1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those that are (1) specifically defined in **Appendix A** of the General Conditions, and (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the Contract Documents.

1.4 CONSTRUCTION OF LANGUAGE

1.4.1 General. In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” articles such as “the” and “an” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The terms and phrases used in the Contract Documents, unless the context otherwise requires, are to be interpreted as follows: (i) the words “including,” “include” or “includes” mean including without limitation; (ii) reference to any agreement, appendix, schedule, exhibit, instrument or coverage policy means as such is amended, modified or supplemented, including by waiver or consent; (iii) reference to any Applicable Laws means such Applicable Laws, as amended, modified, codified or reenacted, in whole or part, and in effect from time to time; (iv) reference to any Party includes such Party’s successors and assigns, to the extent that such successors and assigns are permitted; (v) pronouns in masculine, feminine and neuter genders are to be construed to state and include any other gender; (vi) the words “will” and “shall” have the same meaning; (vii) unless the context otherwise requires, all defined terms in the Contract Documents include the singular and the plural; (viii) “to the extent practicable” means using good faith, commercially reasonable efforts, without the expenditure of significant additional costs or expenses as compared to other compliant alternatives; (ix) the headings and captions contained in the Contract Documents are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of the agreements or the intent of any provision of the agreements; (x) all monetary figures are expressed in currency of the United States of America (US Dollars); and (xi) the language in the Contract Documents shall be construed according to its customary meaning within the construction industry in Minnesota except where a specific definition is provided herein.

1.4.2 Approved. When the words “approved,” “satisfactory,” “proper” or “as directed” are used, approval by the Authority shall be understood.

1.4.3 Provide. When the word “provide,” including derivatives thereof, is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Contract Documents.

1.4.4 - 1.4.5 [Reserved]

1.4.6 Knowledge. The terms “knowledge,” “recognize” and “discover,” their respective derivatives and similar terms in the Contract Documents, as used in reference to the Construction Manager, shall be interpreted to mean that which the Construction Manager knows, recognizes, or discovers or should have known, recognized, or discovered utilizing the Standard of Care applicable to the Construction Manager. The expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted by the Authority to mean reasonably inferable by the Construction Manager utilizing the Standard of Care applicable to the Construction Manager.

1.4.7 Persistently. The phrase “persistently fails” and other similar expressions, as used in reference to the Construction Manager, shall be interpreted to mean any combination of acts and omissions, which causes the Authority to reasonably conclude that the Construction Manager will not complete the Work within the Contract Time, for the GMP, or in substantial compliance with the requirements of the Contract Documents.

1.5 CONFIDENTIALITY

1.5.1 As a result of the Architect, Construction Manager and all other members of the Project Team's participation in the Project, the Project Team will have access to information and materials of a highly sensitive nature, including Confidential Information belonging to the Authority or the Team. The Construction Manager, hereby warrants that its employees, subcontractors, and agents shall not (without in each instance obtaining prior written consent of the other party) disclose, make commercial or other use of, or give or sell to any person, firm, or corporation, any Confidential Information received directly or indirectly from the Authority or the Team, as applicable, or acquired or developed in the course of the performance of the Work unless: (1) required to do so pursuant to Applicable Laws (and then only after the Architect, Construction Manager or other member of the Project Team has given the Authority or the Team, as applicable, prompt written notice of the legal compulsion and, at the Authority's or the Team's, as applicable, expense, provide the Authority or the Team, as applicable, with cooperation in any attempt the Authority or the Team, as applicable, may make to gain a protective order acceptable to the Authority or the Team, as applicable); or (2) it is rightfully in the possession of the Architect, Construction Manager or other Project Team member from a source other than the Authority or the Team prior to the time of disclosure of the information to the Architect, Construction Manager or other Project Team member under the Contract Documents; or (3) it became part of the public domain prior to the time of the Architect's, Construction Manager's or other Project Team member's receipt; or (4) it is supplied to the Architect, Construction Manager, or other Project Team members receipt by a third party who is under no obligation to the Authority or to the Team to maintain such information in confidence; or (5) it was independently developed by the Architect, Construction Manager, or other Project Team member prior to the time of receipt.

1.5.2 The Architect's, Construction Manager's, or other Project Team members' confidentiality and non-disclosure obligations shall survive the expiration or earlier termination of their respective agreements and shall continue for a period of ten (10) years following the expiration or earlier termination of their respective agreements. All Confidential Information, regardless of form, shall be the property of the Authority or Team, as applicable, and shall be returned to the Authority or Team upon its request, or in any event, at the expiration or earlier termination of the Construction Services Agreement.

1.6 TRADE SECRETS, TRADEMARKS AND TRADE NAMES

1.6.1 The Architect, Construction Manager, and Project Team acknowledge that the Authority or Team may provide the Architect, Construction Manager, and Project Team with access to certain information which may qualify as a Trade Secret under Applicable Laws, and the Architect, Construction Manager, and Project Team agree that for all such Trade Secrets that come into their possession, custody or control: (1) such Trade Secrets shall remain the sole property of the Authority or Team, as applicable, and the Architect, Construction Manager, and Project Team shall have no interest in said Trade Secrets; (2) the Architect, Construction Manager, and Project Team shall maintain the secrecy of the Trade Secrets for so long as they remain Trade Secrets under Applicable Laws; and (3) immediately upon the expiration or earlier termination of the Project, the Architect, Construction Manager, and Project Team shall deliver to the Authority or Team, as applicable, all Trade Secret documentation and any and all copies thereof, regardless of form or content.

1.6.2 Without prior written approval of the Authority or Team, as applicable, the Architect, Construction Manager, and Project Team shall have no right to use any Trademark or Trade Name of the Authority, Team, or Affiliated Entities. Further, the Architect, Construction Manager, and Project Team shall not refer to the Contract Documents or the Services or Work performed thereunder or to any Confidential Information, directly or indirectly, in connection with any production, promotion, or publication without the prior written consent of the Authority and Team, and the Authority and Team reserve the right in their sole discretion to release such information, time its release, and approve its form and content prior to release.

1.6.3 The Architect, Construction Manager, and Project Team may publish information (other than Trade Secrets and Confidential Information, which shall not be published) and images resulting from or relating to their Services or Work only after obtaining the Authority's and Team's prior written approval, which Authority and Team may grant or withhold in their sole discretion. The Authority and Team's approval, if granted, may be conditioned upon changes in the text, the use of different images, or reasonable delay in publication to protect Trade Secrets or Confidential Information and other interests of the Authority or Team.

1.7 PRESS RELEASES AND OTHER PROMOTIONAL MATERIALS

1.7.1 Both prior to, during, and after completion of the Project, the Authority and Team shall control the issuance of all press releases and all contacts with the press and all other media relating to the Project. The Architect, Construction Manager, and Project Team may not issue any press release, agree to be interviewed by members of the press, or otherwise interact with and/or disseminate information to the press or any media without the prior written consent of the Authority and Team, which consent may be withheld by the Authority and Team in their sole discretion.

1.7.2 After completion of the Project, the Architect, Construction Manager, and Project Team may use images of the Project and explanatory text in the Architect's, Construction Manager's, and Project Team member's marketing and promotional materials, subject to the Authority's and the Team's written approval prior to the Architect's, Construction Manager's, or Project Team member's first use of such materials; provided, however, that the Architect's, Construction Manager's, and Project Team member's marketing and promotional materials should not include any of the Authority's or the Team's Confidential Information.

1.7.3 No signs advertising the services to be performed by the Architect, Construction Manager, or Project Team, or identifying any person, firm or entity concerned with the Work to be performed by the Architect, Construction Manager, or Project Team shall be

allowed at the Project Site or elsewhere unless approved in writing by the Authority and the Team in advance, which approval shall be within Authority's and the Team's sole and exclusive discretion.

1.8 TAXATION

The Construction Manager is responsible for any and all costs of taxes, license fees, royalties, and related fees imposed by any Governmental Authority having jurisdiction over the Project and associated with its Work.

1.9 NO WAIVER

The failure of the Authority or Team to insist upon strict performance of the Contract Documents or any of their rights on any occasion shall not be deemed a waiver of any rights under the Contract Documents or otherwise.

1.10 SEVERABILITY

Except as expressly provided to the contrary in the Contract Documents, each section, part, term, and provision of the Contract Documents is severable from each other section, part, term, and provision and if, for any reason, any section, part, term, or provision of the Contract Documents is determined by a court or arbitrator having valid jurisdiction in a decision which becomes final and not subject to appeal to which the parties are bound, to be invalid and contrary to, or in conflict with, any Applicable Laws, the determination that the section, part, term, or provision is invalid will not impair the operation of, or have any other effect on, the other portions, sections, parts, terms, and provisions of the Contract Documents as may remain otherwise enforceable, and all of the remaining sections, parts, terms, and provisions of the Contract Documents will continue to be in full force and effect and be binding. Any sections, parts, terms or provisions so determined to be invalid and contrary to, or in conflict with, any Applicable Laws will be severed from the Contract Documents without any further action of the Architect, Construction Manager, or the Authority to amend the Contract Documents. It is the intention of the Architect, Construction Manager, and the Authority that if any provision of the Contract Documents is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, then the provision shall have the meaning which renders it enforceable.

1.11 INTERPRETATION

The Authority and Construction Manager acknowledge and agree that they have participated jointly in the negotiation and drafting of the Contract Documents to which they are parties. If an ambiguity or question of intent or interpretation arises, the Contract Documents are to be construed as if drafted jointly by the applicable Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of the Contract Documents.

1.12 MULTIPLE COUNTERPARTS; FAXES

The Contract Documents may be executed in counterparts. It is not necessary that the signature on behalf of each party appear on each counterpart copy, so long as each party executes the Contract Documents. All counterparts of the Contract Documents collectively constitute a single agreement. Authority is authorized to combine each party's execution sheets into a single document. A facsimile-transmitted signature of the Contract Documents or any document, instrument, or agreement hereinafter executed or given in connection with the Contract Documents shall be considered valid and binding upon the parties as if an original.

1.13 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations, warranties, and indemnifications set forth in the Contract Documents and in any document, instrument, or agreement executed or given in connection herewith, shall survive final completion of the Work or termination of the Contract Documents.

1.14 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.14.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Construction Manager is described, and are the property of the Authority. The Construction Manager or any Subcontractor, Sub-Subcontractor, Supplier, Trade Contractor, Vendor, or Consultant shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect. The Authority will retain all common law, statutory and other reserved rights, in addition to the copyright. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager or any Subcontractor, Sub-Subcontractor, Supplier, Trade Contractor, Vendor, or Consultant, are for use solely with respect to this Project. They are not to be used by the Architect, Construction Manager or any Subcontractor, Sub-Subcontractor or Supplier, Trade Contractor, Vendor, or Consultant on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Authority. The Construction Manager, Subcontractors, Sub-Subcontractors, Suppliers, Trade Contractor, Vendors, or Consultant are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Authority's copyright or other reserved rights.

ARTICLE 2 PROJECT REPRESENTATIVE

2.1 [Reserved]

2.2 LIMITATION OF LIABILITY OF PROJECT REPRESENTATIVE(S) Notwithstanding any of the rights and authority granted the Authority in the Design Services Agreement or the Contract Documents, the Authority and the Indemnitees are not and shall, in no event, be responsible or in any manner liable for any aspect of the Design Services, including, without limitation, design, engineering, inspections, quality control, review and coordination of the Construction Documents or design administration services, which shall be provided solely by the Architect under the Design Services Agreement. Likewise, the Authority and the Indemnitees, are not and shall in no event, be responsible or in any manner liable for any aspect of the Construction Manager's Work, including construction management and administration, cost estimating, the GMP, the Contract Time, Value Engineering, scheduling, review and coordination of the Construction Documents, construction means, methods, techniques, inspections, safety, quality control, constructability sequences and procedures, which shall be performed solely by the Construction Manager under the Construction Services Agreement. In no event shall the Authority or Indemnitees have any responsibility for safety precautions and programs in connection with the Construction Manager's Work, notwithstanding any of the rights and authority granted the Authority and the Indemnitees in or under the Contract Documents.

ARTICLE 3
AUTHORITY

3.1 DEFINITION

3.1.1 [Reserved]

3.1.2 [Reserved]

3.2 [Reserved]

3.3 EXTENT OF AUTHORITY RIGHTS

3.3.1 The rights stated in this **Article 3** and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Authority (1) granted in the Contract Documents, (2) at law or (3) in equity.

3.3.2 It is the clear intent of the Parties that the Authority and the Indemnitees, will have no responsibility or liability for any aspect of the Design Services or Construction Manager's Work as defined in the Design Services Agreement with the Architect and the Construction Services Agreement with the Construction Manager, respectively. The Construction Manager acknowledges and agrees to this provision by execution of its Contract Documents with the Authority.

3.4 DIRECT PURCHASES BY AUTHORITY

3.4.1 Before the GMP is established, the Construction Manager acknowledges that the Authority reserves the right to purchase directly any equipment and materials for the Work. For any item directly purchased by the Authority, the gross price of such item, plus the sales or use tax, if any, that would have been applicable to such item if not purchased by the Authority, shall not be a part of the GMP to be paid to the Construction Manager. Any discounts, savings or rebates on purchases by Authority of equipment and materials shall belong to the Authority.

3.4.2 The Authority shall receive, store, and protect all equipment and materials that it purchases until they are provided to the Construction Manager at the Project Site or delivered to such place as designated by the Construction Manager. Authority may order the supplier to deliver such equipment and materials directly to the Project Site. Upon delivery to the Project Site, or such place as is designated by the Construction Manager, the Construction Manager shall be responsible for inspecting such equipment and materials to assure the Authority that they are acceptable and in conformance with the Contract Documents. Any defect or deficiency shall be called to the attention of the Authority immediately upon delivery in order that the Authority may make necessary arrangements for the adjustment or replacement of such equipment and materials. The Construction Manager shall not install any defective equipment or materials. Upon acceptance of such equipment and materials, the Construction Manager is responsible for the installation and incorporation of such equipment and materials into the Work in accordance with the Contract Documents.

3.4.3 Authority shall at all times have and possess all incidents of ownership with respect to equipment and materials purchased by it.

3.4.4 The Authority shall be responsible for any and all sales or use tax imposed on any direct purchases of materials or supplies made by the Authority. For purchases made by the Authority, the Authority agrees to indemnify, defend, and hold the Construction Manager harmless from any and all sales and use tax imposed or assessed against the Construction Manager, its Subcontractors, and Suppliers, including all losses, expenses, interest, fines, costs and reasonable attorney's fees incurred in any action, suit, or proceeding related to, in connection with, or arising out of any assessment of sales or use taxes for direct purchases made by the Authority. The Construction Manager shall notify the Authority of any assessment or proposed assessment. The indemnification contained in this **Subparagraph 3.4.4** shall survive beyond completion of Work under the Contract Documents.

3.5 AUTHORITY DIRECTION OF WORK AND INSPECTIONS

3.5.1 In no event shall the Authority have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Authority in the Contract Documents.

3.5.2 Inspection of the progress, quantity, or quality of the Work done by the Authority, any Authority's representative, any Governmental Agency, the Architect, or any inspector, shall not relieve the Construction Manager of any responsibility for the compliance of the Work with the Contract Documents. The Authority or its approved representative shall have access to the work site and all Work. No supervision or inspection by the Authority's representative, nor right of the Authority to act, nor any other actions taken by the Authority's representative shall relieve the Construction Manager of any of its obligations under the Contract Documents nor give rise to any duty on the part of the Authority.

3.6 AUTHORITY'S RIGHT TO RECORDS

3.6.1 The Construction Manager's records, which shall include but not be limited to accounting records, written policies and procedures, Subcontractor files (including proposals of successful bidders), original estimates, estimating work sheets, correspondence, schedules, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Construction Services Agreement (all foregoing hereinafter referred to as "**Records**") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the Authority, Team and their respective agents or authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments, or Claims submitted by the Construction Manager or any of its payees. Such Records subject to examination shall also include those Records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Construction Services Agreement.

3.6.2 For the purpose of such audits, inspections, examinations, and evaluations, the Authority, Team, and their respective agents, or authorized representatives, shall have access to said Records from the effective date of the Construction Services Agreement for the duration of Work and until twelve (12) years (or longer if required by law) after the date of final payment by Authority to Construction Manager.

3.6.3 The Authority, Team, and their respective agents or authorized representatives shall have access during normal business hours to the Construction Manager's facilities, shall have access to all necessary records and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this **Article 3**. The Authority, Team, and their respective agents or authorized representatives shall give any entity to be audited reasonable advance notice of intended audits.

3.6.4 Construction Manager shall require all Subcontractors, insurance agents, and Suppliers (payees) with cost plus contracts and not fixed price contracts to comply with the provisions of this **Article 3** by insertion of the requirements hereof in a written contract agreement between Construction Manager and its Subcontractors and Suppliers. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payee's costs from amounts payable to the Construction Manager pursuant to this Construction Services Agreement.

ARTICLE 4 CONSTRUCTION MANAGER

4.1 DEFINITION

4.1.1 [Reserved]

4.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONSTRUCTION MANAGER

4.2.1 The Construction Manager shall carefully study and compare the Contract Documents with each other and with information furnished by the Authority and shall at once report to the Authority and Architect errors, inconsistencies, or omissions discovered. Prior to execution of the Construction Management Plan including its GMP Proposal (**Exhibit 3** to the Construction Services Agreement), the Construction Manager and each applicable Subcontractor shall have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitations, (i) the location, condition, layout, and nature of the Project Site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues impacting the Work, and have calculated the GMP and Contract Time accordingly. The Authority shall not be required to make any adjustment in either the GMP or the Contract Time in connection with any failure by the Construction Manager or any applicable Subcontractor to have complied with the requirements of this **Subparagraph 4.2.1**.

4.2.2 The Construction Manager shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Construction Manager with the Contract Documents before commencing its Services or the Work. Errors, inconsistencies, or omissions discovered shall be reported to the Authority and Architect at once. In all cases of interconnection of its Work with existing or other work, including Vendor Work or Trade Contractor Work, Construction Manager shall verify at the Project Site all dimensions relating to such existing or other work. Any errors due to the Construction Manager's failure to so verify all such dimensions or locations shall be promptly rectified by the Construction Manager without any additional cost to the Authority and such corrections shall not be considered an allowable Cost of Work; nor shall the Construction Manager be permitted to utilize its Contingency to cover the cost of such corrections. The Construction Manager shall promptly rectify any errors due to the Construction Manager's failure to so verify all such grades, elevations, locations or dimensions. The Construction Manager is responsible for coordination of the Work with the field verification of existing

conditions to establish conformance with the Contract Documents. The Construction Manager's obligations herein include verifying dimensions and conditions of materials or equipment directly purchased by the Authority. The Construction Manager shall, therefore, satisfy itself as to the accuracy of all dimensions and locations shown on the Drawings and other Contract Documents and those dimensions and locations that are present at the Project Site and compare one to the other before starting the Work in the affected area.

4.2.3 The Construction Manager shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to **Paragraph 4.12**.

4.2.4 Except as to any reported errors, inconsistencies, or omissions, concealed or unknown conditions defined in **Subparagraph 6.2.6** hereof, and Changes to the Work as contemplated by **Paragraph 9.2** hereof, by executing the Construction Management Plan in **Exhibit 3** of the Construction Services Agreement, the Construction Manager shall warrant and represent the following:

- .1** (1) The Contract Documents are sufficiently complete, coordinated, and detailed for the Construction Manager to perform the Work required to produce the results intended by the Contract Documents and comply with all requirements of the Contract Documents, (2) the Guaranteed Maximum Price is just and reasonable compensation for all the Work, (3) the Construction Manager Contingency is sufficient to address all foreseen and unforeseen conditions that will impact the Work and ability to complete the Work in accordance with the Guaranteed Maximum Price and Contract Time, (4) the Contract Time is adequate for the performance of the Work, (5) the Construction Manager has sufficient and complete information at the time it executes the Construction Management Plan to complete the Construction Manager's buyout of the Work, (6) Construction Manager has been provided adequate information to understand existing conditions including subsurface conditions, and (7) the Construction Manager has a complete understanding of the scope of the Work and has been provided adequate time to establish the Guaranteed Maximum Price in sufficient detail to support the Guaranteed Maximum Price.
- .2** The Work required by the Contract Documents, including all construction details, and construction means, methods, procedures, and techniques necessary to perform the Work are consistent with: (1) good and sound practices within the construction industry, (2) generally prevailing and accepted industry standards applicable to the Work, and (3) all Applicable Laws.

4.2.5 The Construction Manager shall make available to the Authority and the Architect the results of any Project Site investigation, test borings, analyses, studies, or other tests conducted by or in possession of the Construction Manager. The Construction Manager represents that it is familiar with the Project Site and has reviewed all of the Contract Documents and other information provided by the Authority and Architect concerning the conditions of the Project Site and the Work. The Construction Manager shall have no claims for surface or subsurface conditions encountered, except as provided in **Subparagraph 6.2.6** hereof. The Construction Manager shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Construction Manager shall properly supervise and direct the Work. The Construction Manager shall be solely responsible for and have control over all construction means, methods, techniques, sequences, and procedures and for coordination of the duties of all trades, unless the Contract Documents give other specific instructions concerning these matters.

4.3.2 The Construction Manager shall be solely responsible to the Authority for acts and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and any other Person performing portions of the Work under a contract with the Construction Manager.

4.3.3 The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by activities or duties of the Architect in the Architect's administration of the Work under the Contract Documents or by tests, inspections, or approvals required or performed by persons other than the Construction Manager.

4.3.4 The Construction Manager shall be responsible for continuous and thorough inspection of portions of Work already performed under the Construction Services Agreement to determine that such portions are in proper condition to receive subsequent Work.

4.3.5 If any of the Work is required to be inspected or approved by any Governmental Authority, the Construction Manager shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Authority hereunder shall be a waiver of any of the Construction Manager's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall arrange for payment of labor, materials, equipment, tools, construction equipment and machinery, water, heat, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Construction Manager elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the

Construction Manager. The Construction Manager shall check all materials and labor entering into the Project Site or incorporated into the Work and shall keep full detailed accounts thereof. The Construction Manager shall reject any materials that will not conform with the Contract Documents when properly installed.

4.4.2 The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees and other Persons carrying out the Work. The Construction Manager shall not permit employment of unfit Persons not skilled in tasks assigned to them.

4.4.3 The Construction Manager shall only employ labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other Persons associated with the Project. The Construction Manager shall also use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

- .1 If the Work is to be performed by trade unions, the Construction Manager shall make all necessary arrangements to reconcile any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the Work of any particular trade.
- .2 Construction Manager shall negotiate and implement a Project Labor Agreement as approved by the Authority.
- .3 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of a conflict involving any labor agreement or regulation, the Authority may require that other material or equipment of equal kind and quality be provided pursuant to a Contract Revision, Change Order, or Construction Change Directive.

4.4.4 If, after execution of the Construction Services Agreement and prior to submittal of applicable Shop Drawings, the Construction Manager desires to submit an alternate product in lieu of what has been specified or shown in the Contract Documents, the Construction Manager may do so in writing to the Architect, with a copy to the Authority, and setting forth the following:

- .1 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- .2 Reasons the substitution is advantageous and beneficial to the Project, the Work, or the Construction Schedule in the event the substitution is acceptable.
- .3 The adjustment, if any, in the GMP or Construction Schedule in the event the substitution is acceptable.
- .4 A statement that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings and (2) the Construction Manager will provide a warranty for the substituted material, equipment, or portion of the Work comparable to the originally specified material, equipment or portion of the Work. Proposals for substitutions shall be submitted in triplicate to the Architect and Authority in sufficient time to allow the Architect and Authority no less than ten (10) working days for review. No substitutions will be considered or allowed without the Construction Manager's submittal of complete substantiating data and information as stated hereinbefore.

4.4.5 Substitutions and alternates may be rejected by the Authority or Architect and will be considered only under one or more of the following conditions:

- .1 Required for compliance with interpretation of code requirements or insurance regulations or suggestions.
- .2 Unavailability of specified products, through no fault of the Construction Manager.
- .3 Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- .4 Manufacturer/fabricator refuses to certify or guarantee performance or specified product as required.
- .5 In the judgment of the Authority or the Architect, a substitution would be in the best interests of the Authority to consider in terms of cost, time, or other considerations.

4.4.6 Whether or not any proposed substitution is accepted by the Authority, the Construction Manager shall reimburse the Authority for any reasonable fees charged by the Architect or other Consultants for evaluating each proposed substitute.

4.5 WARRANTY

4.5.1 The Construction Manager warrants to the Authority that the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Construction Manager represents and warrants to the Authority that its materials and workmanship, including its construction means, methods, procedures, and

techniques necessary to perform the Work, and its use of materials, selection of equipment, and requirements of product manufacturers are and shall be consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) all Applicable Laws. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective, and promptly after notification of non-conformance shall be repaired or replaced by Construction Manager with Work conforming to this warranty. The Construction Manager's warranty excludes remedy for damage or defect caused by normal wear and tear under normal usage. If required by the Authority, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.5.2 Construction Manager further warrants that all materials that affect the aesthetics of finishes or equipment of a category or classification will be a product of the same manufacturer and such materials or equipment shall be of the same lot, batch, or type and that such materials and equipment will be as specified in Contract Documents or as approved by Addendum or Contract Revision, as applicable.

4.5.3 The Construction Manager agrees to assign to the Authority at the time of Substantial Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Construction Manager hereby agrees that such warranties shall be in full force and effect as of the Date of Substantial Completion, and the warranty periods shall commence as of the Date of Substantial Completion

4.6 TAXES

4.6.1 Except for direct purchases made by the Authority, and unless otherwise exempted by the Act, the Construction Manager shall pay appropriate sales, consumer, use, employment-related taxes, and similar taxes for Work or portions thereof provided by the Construction Manager which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Project is exempt from sales tax to the extent provided under Section 6 of the Act, Minn. Stat. § 297A.71, Subd. 43. The Construction Manager is responsible for compliance with Minnesota Department of Revenue procedures to obtain the benefits of such exemption.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure, pay for, and, as soon as practicable, furnish the Authority with copies or certificates of all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work. The Construction Manager shall procure all certificates of inspection, occupancy, permits, and licenses, pay all customary charges and fees including sewer access and water access charges, and give all notices necessary and incidental to the lawful prosecution of the Work. The Construction Manager shall deliver certificates of inspection, use, and occupancy to the Authority upon completion of the Work in sufficient time for occupancy of the Project in accordance with the Construction Schedule. The costs of such procurement, payment, and delivery are included within the GMP. Unless due to defects or deficiencies in the Contract Documents, failure to obtain such approvals shall not extend the Contract Time.

4.7.2 The Construction Manager shall comply with and give notices required by Applicable Laws. The Construction Manager shall procure and obtain all bonds or other security required of the Construction Manager by the Construction Services Agreement, the Act or as otherwise required by Applicable Laws. In connection with such bonds or other security, the Construction Manager shall prepare all applications, supply all necessary back-up material, and furnish the surety or other insurer with any required personal undertakings. The Construction Manager shall also obtain and pay all charges for all approvals for street closing, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work, all of which costs and charges are included in the GMP.

4.7.3 The Construction Manager shall not knowingly violate any Applicable Laws, including zoning, setback or other location requirements, temporary or conditional use permits, or of any recorded covenants of which the Construction Manager has knowledge. If the Construction Manager observes or recognizes that portions of the Contract Documents are at variance with Applicable Laws, the Construction Manager promptly shall notify the Authority and Architect in writing, and necessary changes shall be accomplished by appropriate Contract Revision.

4.7.4 If the Construction Manager performs Work knowing it to be contrary to Applicable Laws without such notice to the Authority and Architect, the Construction Manager shall assume full responsibility for such Work and shall bear any and all costs attributable to correct it and all damages resulting therefrom.

4.8 ALLOWANCES

4.8.1 The Construction Manager shall include in the Guaranteed Maximum Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as approved by the Authority based on the Construction Manager's recommendation, but the Construction Manager shall not be required to employ persons or entities against which the Construction Manager makes reasonable objection.

4.8.2 Unless otherwise provided in **Exhibit 3** of the Construction Services Agreement:

- .1** materials and equipment under an allowance shall be selected promptly by the Authority or Construction Manager, as the case may be, so as to avoid delay in the Work, and Construction Manager shall identify

decisions needed from the Authority on the Construction Schedule and give Authority a reasonable time to make those decisions;

- .2 allowances shall cover the cost to the Construction Manager of materials, equipment, unloading, handling at the Project Site, labor, installation costs, overhead, profit, all required taxes, less applicable trade discounts, and other expenses contemplated and encompassed in the allowance;
- .3 the cost of estimated allowances, while not guaranteed, represent Construction Manager's best estimate; and
- .4 whenever allowable costs are more than or less than allowances, the GMP shall be adjusted accordingly by Contract Revision.

4.9 FIELD PERSONNEL

4.9.1 The Construction Manager shall employ a competent superintendent and project executive and, as necessary, competent staff who shall be in attendance at the Project Site during performance of the Work. The superintendent and project executive shall represent the Construction Manager, and communications given by or to the superintendent or project executive shall be as binding as if given by or to the Construction Manager. Important communications shall be similarly confirmed on written request in each case. The Construction Manager's superintendent, project executive, and staff shall be satisfactory to the Authority and Team in all respects, and the Authority and Team shall have the right to require Construction Manager to dismiss from the Project any superintendent, project executive, or staff whose performance is not satisfactory, and to replace such superintendent, project executive, and staff with a superintendent, project executive or staff satisfactory to the Authority and Team in their sole discretion. The Construction Manager shall not replace the superintendent, project executive, or staff without the written consent of the Authority and Team.

4.10 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE

4.10.1 The Construction Manager shall prepare in consultation with the Authority, Team and Architect and submit for the Authority's review and approval a Construction Schedule. The Construction Schedule shall not exceed time limits current under the Contract Documents, shall be updated and revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, shall provide for expeditious and practicable execution of the Work, and shall not be modified or extended without the prior written approval of the Authority in each instance. The Construction Schedule shall include, but shall not be limited to, a schedule of primary trade activities and the delivery of or installation of critical materials or components, the failure of timely delivery of which will adversely impact the Project's completion as provided in the Contract Documents.

4.10.2 The Construction Manager shall prepare a monthly report in a form in sufficient detail, and of a character approved by the Authority (the "Progress Report"). The Progress Report shall specify, among other things, an estimated percentage of completion, whether the Project is in compliance with the Construction Schedule, and if not, the reasons therefor, and the proposed new Construction Schedule, as well as the number of man-days worked for each category of labor and the projected Work to be completed in the next succeeding month. Accompanying the Progress Report shall be an updated current Construction Schedule subject to the approval of the Authority, and a listing and the status of all Contract Revisions, Modifications, Bulletins, and other relevant documents. The Construction Manager shall additionally maintain a daily log (the "Daily Log") containing a record of weather, Subcontractors working on the Project, number of workers, Work accomplished, problems encountered, and other similar relevant data as the Authority may reasonably require. The log shall be available at all times to the Authority or the Architect. The Construction Manager shall prepare such additional reports as the Authority may reasonably request.

4.10.3 The Construction Manager shall hold weekly progress meetings at the Project Site or at such other time and frequency as the Authority requests. Progress of the Work shall be reported in detail with reference to the Construction Schedule. Each appropriate Subcontractor shall have present a competent representative to report the condition of its work and to receive information.

4.10.4 [Reserved]

4.10.5 The Construction Manager shall conform to the most recent Construction Schedule.

4.10.6 The Construction Schedule shall be in a detailed format satisfactory to the Authority which shall also: (i) provide a 3-dimensional, BIM based graphic representation of all activities and events that will occur during performance of the Work; (ii) identify early and late start dates so that all "float" time can be accurately identified; (iii) provide relationships, interdependencies, and constraints among the various line items of Work; (iv) identify each phase of construction and occupancy for each phase; (v) set forth certain major dates by which certain activities must be accomplished that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"); (vi) identifies, coordinates, and integrates the design and construction schedules; and (vii) identifies dates by which decisions must be made by the Authority and provides a reasonable amount of time for the Authority to make such decisions. Upon its review and acceptance by the Authority, the Construction Schedule shall be deemed part of the Contract Documents. If not accepted, the Construction Schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Authority and the Architect and re-submitted for acceptance by the Authority. The Construction Manager shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Authority, Team and Architect of any delays or potential delays. The accepted Construction Schedule shall be updated in each progress report to reflect actual conditions as set forth in **Subparagraphs 4.10.1 and 4.10.2** hereof. In the event any progress report indicates any delays, the

Construction Manager shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any Progress Report constitute an adjustment in the Contract Time, any Milestone Date, or the GMP unless any such adjustment is agreed to by the Authority and authorized pursuant to a Contract Revision.

4.10.7 In the event the Authority determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Authority shall have the right, but not the obligation, to order the Construction Manager to take corrective measures necessary to expedite the progress of construction including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as “Extraordinary Measures”). Such Extraordinary Measures shall continue until the progress of the Work complies in the Authority’s reasonable judgment with the stage of completion required by the approved Construction Schedule. The Authority’s right to require Extraordinary Measures is solely for the purpose of ensuring the Construction Manager’s compliance with the Construction Schedule.

- .1 To the extent that the need for Extraordinary Measures is the responsibility or fault of the Construction Manager, the Construction Manager shall not be entitled to an adjustment in the GMP or Contract Time in connection with Extraordinary Measures pursuant to this **Subparagraph 4.10.7**.
- .2 The Authority may exercise the rights under or pursuant to this **Subparagraph 4.10.7** as frequently as the Authority deems necessary to ensure that the Construction Manager’s performance of the Work will comply with any Milestone Date in the Construction Schedule.

4.10.8 The Authority shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Authority’s premises or any tenants or invitees thereof. **4.10.9** Float in the Construction Schedule shall be utilized for the benefit of the Project.

4.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

4.11.1 The Construction Manager shall maintain at the Project Site for the Authority one record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples, and similar required Submittals. These shall be available to the Authority, Team and Architect and shall be delivered to the Architect for submittal to the Authority upon completion of the Work.

4.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Construction Manager or Subcontractors, Sub-Subcontractors, Supplier, manufacturer, or distributor to illustrate some portion of the Work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished to illustrate materials or equipment for some portion of the Work.

4.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

4.12.4 Product Data, Samples, and similar Submittals other than Shop Drawings are not Contract Documents. The purpose of the Submittal is to demonstrate for those portions of the Work for which Submittals are required the way the Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents.

4.12.5 The Construction Manager shall review, approve, and submit to the Authority and Architect Shop Drawings, Product Data, Samples, and similar Submittals required by the Contract Documents with reasonable promptness, but in no event less than ten (10) days after receipt of same, and in such sequence as to cause no delay in the Work or in the activities of the Authority or any Trade Contractors or Vendors. When and as requested by the Authority, Construction Manager and Architect shall tender an agreed-upon schedule describing all Submittals, identifying the dates when Submittals are to be given to the Architect, establishing time for Architect’s review of Submittals, and re-submission, if any, of Submittals by Construction Manager to Architect (the “Submittal Schedule”). The Authority will be provided with a copy of all approved Shop Drawings, Product Data, Samples and similar Submittals for the Project file.

4.12.6 The Construction Manager shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar Submittals until the respective Submittal has been reviewed and approved by the Architect. Such Work shall be in accordance with approved Submittals.

4.12.7 By approving and submitting Shop Drawings, Product Data, Samples, and similar Submittals, the Construction Manager represents that the Construction Manager has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

4.12.8 The Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect’s approval of Shop Drawings, Product Data, Samples, or similar Submittals unless the Construction Manager has specifically informed the Architect in writing of the existence and nature of such deviation at the time of submittal and

the Architect has given written approval to the specific deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in Shop Drawings, Project Data, Samples, or similar Submittals by the Architect's approval thereof.

4.12.9 The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar Submittals, to revisions other than those requested by the Architect, or previous Submittals.

4.12.10 Informational Submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

4.12.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Construction Manager shall provide the person or parties providing the certification with full information on the specified performance requirements of the materials, systems, or equipment. The certification shall be based on performance under the operating conditions identified in the Contract Documents. The Authority and Architect shall be entitled to rely upon the accuracy and completeness of such certificates.

4.12.12 All Shop Drawings, Product Data, Samples, or similar Submittals must be submitted to, and approved by, the Architect. The Construction Manager shall represent and warrant that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Contract Documents or Applicable Laws, by a licensed design professional.

4.12.13 The Architect shall be responsible to review and approve Shop Drawings, Product Data, Samples, or similar Submittals for conformance with the design requirements and criteria set forth in the Contract Documents. The Architect shall promptly review all such Shop Drawings, Product Data, Samples, or similar Submittals and provide the Construction Manager with written notice of the Architect's approval or rejection, no less than ten (10) days after receipt of same, and in such sequence as to cause no delay to the critical path of the Work as set forth in the Construction Schedule or in the activities of the Authority or separate Trade Contractors or Vendors unless a shorter period of time is required by the Submittal Schedule. It is the responsibility of the Architect and Construction Manager to coordinate the schedule and sequence for review and approval of all Submittals in accordance with the Contract Documents and to work in a cooperative fashion to avoid any delays in the processing of Submittals. The Authority will assume no responsibility or liability associated with delays in the review and/or approval of Submittals by either the Construction Manager, Architect, or any other member of the Project Team.

4.12.14 The Architect will review and approve or take other appropriate action upon the Construction Manager's Submittals such as Shop Drawings, Product Data and Samples, for the purpose of: (1) verifying compliance with Applicable Laws and the NFL Rules and Regulations; and (2) confirming that such Submittals are in compliance with the requirements of the Contract Documents. Architect shall be responsible for determining what aspects of the Work shall be the subject of Shop Drawings and Submittals. Architect shall promptly inform the Authority when the Construction Manager, Subcontractor or a Trade Contractor has proceeded with any aspect of the Work in the absence of approved Shop Drawings and Submittals. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager as required by the Contract Documents. The Architect's review of the Construction Manager's Submittals shall not relieve the Construction Manager of the obligations under this **Paragraph 4.12**. 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.

4.13 USE OF PROJECT SITE

4.13.1 The Construction Manager shall confine operations at the Project Site to areas permitted by Applicable Laws, the Contract Documents, or as reasonably determined by the Authority, and shall not unreasonably encumber the Project Site with materials or equipment.

4.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project Site by the Construction Manager. After equipment is no longer required for the Work, it shall be promptly removed from the Project Site. Construction Manager will periodically review its onsite equipment usage with the Authority and if any piece of equipment is frequently idle, the Construction Manager shall remove the equipment in question if the demobilization and remobilization charges are less than the charged rental for said equipment; equipment not in use shall be charged at idle equipment rates. Protection of construction materials and equipment that are part of or required for the Work and stored at the Project Site is solely the responsibility of the Construction Manager.

4.13.3 The Construction Manager shall erect signage, as approved by the Authority, describing the Project and its participants at the Project Site, the cost of which shall be included in the Construction Manager's GMP. No party, including the Construction Manager, Subcontractors, Suppliers, the Architect or its Subconsultants shall erect any signage at the Project Site without the Authority's prior written approval. This includes signage on equipment, office trailers, and storage trailers. The Construction Manager shall be responsible to provide and erect any and all signage required for Project safety and related programs, with such signage being approved by the Authority in writing.

4.13.4 Construction Manager shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Project Site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public and private areas adjacent to the Project Site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. Without limitation of any other provision of the

Contract Documents, Construction Manager shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the Project Site or (2) the Stadium in the event of partial occupancy, as more specifically described in **Paragraph 11.9**. In no event shall the Construction Manager, Subcontractors, or Suppliers be present or perform Work on the Project Site for a period that is 24 hours in advance of a home football game of the Team or during such game.

4.13.5 Without prior approval of the Authority, the Construction Manager shall not permit any workers to use any existing facilities at the Project Site, including without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Authority. Without limitation of any other provision of the Contract Documents, the Construction Manager shall comply with all rules and regulations promulgated by the Authority in connection with the use and occupancy of the Project Site and the building, as amended from time to time. The Construction Manager shall immediately notify the Authority in writing if during the performance of the Work, the Construction Manager finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Construction Manager shall also comply with all insurance requirements set forth in the Contract Documents and collective bargaining agreements applicable to use and occupancy of the Project Site.

4.13.6 The Construction Manager shall at all times, cooperate, coordinate, and integrate with any Trade Contractors and Vendors employed by the Authority with respect to their schedules so that the Construction Manager causes no interferences with, delays or disruptions to the Trade Contract Work and Vendor Work, and so that the Work is timely completed to permit the Project to be completed on schedule.

4.14 CUTTING AND PATCHING

4.14.1 The Construction Manager shall be responsible for cutting, fitting, or patching required to complete the Work or to make the Work fit together properly. The Construction Manager shall be responsible for cutting, patching, repairing, and cleaning of any and all roads, streets and walkways providing access to the Project Site that may be damaged during construction.

4.14.2 The Construction Manager shall not damage or endanger a portion of the Work, a Trade Contractor's Work, Vendor's Work, or any other construction fully or partially completed by the Authority, a Trade Contractors, or a Vendor by cutting, patching, or otherwise altering such construction, or by excavation. The Construction Manager shall not cut or otherwise alter a Trade Contractor's Work, Vendor's Work, or any other such construction by the Authority except with written consent of the Authority and the applicable Trade Contractor or Vendor; such consent shall not be unreasonably withheld. The Construction Manager shall not unreasonably withhold from the Authority, Trade Contractor, or Vendor the Construction Manager's consent to cutting or otherwise altering the Work.

4.14.3 Altering or cutting of structural members will not be allowed without written approval by the Architect. The Construction Manager shall in all cases exercise extreme care in cutting operations and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless, avoidable cutting or damage is not permitted and the Construction Manager will be held responsible for such avoidable damage.

4.15 CLEANING UP

4.15.1 The Construction Manager shall keep the premises and all surrounding areas to the Project Site free from (i) accumulation of waste materials, debris, or rubbish; (ii) the Construction Manager's tools, construction equipment, machinery; and (iii) surplus materials, and any excess mud, gravel, or earth caused by operations under the Construction Services Agreement. At completion of the Work, the Construction Manager shall remove from and about the Project waste materials, debris, rubbish, the Construction Manager's tools, construction equipment, machinery, surplus materials, and any excess mud, gravel, or earth from and around the Project and the surrounding rights of way.

4.15.2 If the Construction Manager fails to clean up as provided in the Contract Documents, the Authority may, but shall not be obligated to, perform the Construction Manager's clean up and charge the cost thereof to the Construction Manager.

4.16 ACCESS TO WORK

4.16.1 The Construction Manager shall provide the Authority, Team, their respective agents and representatives, and Architect access to the Work in preparation and progress wherever located.

4.17 ROYALTIES AND PATENTS

4.17.1 The Construction Manager shall pay all royalties and license fees. The Construction Manager shall defend suits or claims for infringement of patent rights and shall hold the Authority, and all Indemnitees harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Construction Manager has reason to believe that the required design, process, or product is an infringement of a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished to the Authority and the Architect.

4.18 INDEMNIFICATION BY CONSTRUCTION MANAGER

4.18.1 Construction Manager hereby agrees, to the fullest extent permitted by Applicable Laws, to indemnify, hold harmless, and defend the Authority, Indemnitees, and the respective directors, officers, agents, and employees of any of them from and against any and all claims, damages, liabilities, losses and expenses (specifically including attorneys' fees and costs, court fees and costs, and arbitration fees and costs incurred to defend the Authority and Manager's liability shall not be limited by the amount or limit of insurance Construction Manager procures to insure its obligations Indemnitees) arising out of, resulting from, or incurred in connection with the performance of the Work and to the extent in whole or in part caused or alleged to have been caused by the (1) negligent or grossly negligent acts or omissions, of the Construction Manager, Construction Manager's employees, Subcontractors, Sub-Subcontractors, Suppliers or any Person for whom the Construction Manager is legally responsible in the performance of the Work under this Construction Services Agreement, whether arising before or after completion of the Work and arising out of, resulting from, or occurring in connection with the performance of the Work or any activity associated with the Work, from any activity of the Construction Manager, Construction Manager's employees, its Subcontractors, Sub-Subcontractors, Suppliers, their agents, or employees at the Project Site or elsewhere, and whether in part caused by the active or passive negligence or other fault of a Party or Person indemnified hereunder, excepting only personal injury to person or damage to property found to have been caused by the sole negligence of a Party or Person indemnified hereunder, or (2) breach of this Construction Services Agreement by the Construction Manager. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a Party or Person described in this **Subparagraph 4.18.1**.

4.18.1.1 Construction Manager acknowledges and agrees that it has an independent obligation under this Construction Services Agreement to procure and maintain such insurance as will insure Construction Manager's obligations in this Construction Services Agreement, and further acknowledges that such insurance is commercially available. Construction Manager's liability shall not be limited by the amount or limit of insurance Construction Manager procures to insure its obligations herein.

4.18.2 In the case of claims against any Party or Person indemnified under this **Paragraph 4.18** by an employee of the Construction Manager, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this **Paragraph 4.18** shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Construction Manager or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

4.18.3 The Construction Manager shall indemnify the Authority, Indemnitees, and the respective directors, officers, agents, and employees of any of them from and against any and all costs and expenses, specifically including attorneys' fees and costs, court fees and costs, and arbitration fees and costs, incurred by any of the foregoing Parties or Persons to enforce any of the Construction Manager's defense, indemnity, and hold-harmless obligations under the Construction Services Agreement.

4.18.4 The Construction Manager's obligation to defend as set forth in **Subparagraph 4.18.1** includes the obligation to provide and pay for attorneys to defend the Party or Persons entitled to indemnification under **Subparagraph 4.18.1**, which attorneys shall be subject to the approval of such Party and Persons; and if such Party or Persons do not approve the attorneys provided by the Construction Manager, the Construction Manager shall promptly pay the attorneys fees incurred by the Party or Persons entitled to indemnification.

4.19 WARRANTIES AND REPRESENTATIONS. The Construction Manager represents and warrants the following to the Authority and Team, in addition to any other representations and warranties contained in the Contract Documents, as an inducement to the Authority to execute the Construction Services Agreement, which representations and warranties shall survive the completion of the Work, any termination of the Construction Services Agreement, and the Final Completion of the Work::

- .1 that it is financially solvent, able to pay all debts as they mature, and possesses sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- .3 that it is authorized to do business in the State of Minnesota and properly licensed by all necessary Governmental Authorities;
- .4 that its execution of the Construction Services Agreement and its performance thereof is within its duly authorized powers;
- .5 that its duly authorized representative has visited the Project Site, is familiar with the local conditions under which the Work is to be performed, and has correlated on site observations with the requirements of the Contract Documents;
- .6 that it has examined the Contract Documents carefully and thoroughly and accepts the responsibilities set forth therein and the obligation to complete the Work in accordance with the Contract Documents;and
- .7 that it possesses a high level of experience and expertise in the business administration, construction, construction management, costing, scheduling and superintendence of projects of the size, complexity, and nature of this particular Project, and that it will perform the Work with the Standard of Care required of the Construction Manager.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Construction Manager by law with respect to the Construction Manager's duties, obligations and performance hereunder. All representations and warranties set forth in the Construction Services Agreement and these General Conditions, including this **Paragraph 4.19**, shall survive the Final Completion of the Work or the earlier termination of the Construction Services Agreement. The Construction Manager acknowledges that the Authority is relying upon the Construction Manager's skills, experience, and promised Standard of Care in connection with the Work described herein.

4.20 CONSTRUCTION MANAGER SELF PERFORMED WORK

4.20.1 To the extent permitted by Applicable Laws, Construction Manager or its Affiliates shall be permitted to bid only on those categories of the Work approved in writing by the Authority. Such approval shall generally only be provided for portions of the Work that (1) the Authority, in consultation with the Construction Manager, determines are critical to the Construction Schedule, (2) the Construction Manager demonstrates to the satisfaction of the Authority that the Construction Manager regularly performs such type of work with its own forces, and (3) the Authority determines that the Construction Manager's performance under the Contract Documents, including performance with respect to the Contract Time and GMP, are materially enhanced due to the Construction Manager self-performing such portions of the Work.

4.20.2 Construction Manager, or its Affiliates, shall be permitted to submit to the Authority a sealed bid for any Work approved by the Authority as potential Self-Performed Work pursuant to the competitive bidding procedures applicable to all bidders. In such instance, the opening, review and advice with respect to award or rejection of such bids shall be managed by the Authority and its designated representative. In such instances, the following requirements shall also apply: (1) if Construction Manager, or its Affiliates, desire to bid on Self-Performed Work, then Construction Manager, or its Affiliates, shall review such Work (including the bid packaging plan) with the Authority and Architect prior to finalizing the bid package; (2) there shall be a strict separation of the personnel involved with bidding the Self-Performed Work and Construction Manager's other personnel involved in the Project, and Construction Manager shall, by written policy distributed to all affected personnel (a copy of which shall be delivered to the Authority), strictly prohibit any communication prior to bid award among personnel involved with the estimating, bidding, management or other services in connection with the Self-Performed Work and personnel working on other aspects of this Project pursuant to this Agreement (other than such communication as is permitted by all bidders); (3) if fewer than two other bids from responsible bidders are submitted for Self-Performed Work, the Authority, at its option, may disqualify Construction Manager, or its Affiliates, from award of the bid for Self-Performed Work and, in the Authority's discretion, may cause the bid package with respect to the Self-Performed Work to be re-bid; (4) Construction Manager shall not participate in the analysis or recommendations with respect to the award of the Subcontract for any Self-Performed Work and all inquiries shall be forwarded to the Authority and its designated representative; (5) Construction Manager shall not be permitted to use Construction Contingency for Self-Performed Work; (6) Construction Manager, or its Affiliates, shall not, in its bid, use any of the General Conditions GMP to support the Self-Performed Work or use the General Conditions GMP for Self-Performed Work on any terms or conditions different from the terms or conditions on which such General Conditions are made available to all other bidders; and (7) the solicitation for bids on Self-Performed Work shall specifically state that Construction Manager, or its Affiliates, shall have the right to submit a sealed bid on Self-Performed Work. If these procedures are not strictly followed, then the Authority shall have the right to reject the bid of Construction Manager or its Affiliates for Self-Performed Work.

4.20.3 In addition, (1) if fewer than two (2) competitive bids from responsible bidders (in addition to the bid of Construction Manager or its Affiliate) are submitted for the Self-Performed Work, or (2) if the bid by Construction Manager or its Affiliates for any Self-Performed Work is higher than the most recent estimate of the Cost of the Work for such Self-Performed Work, as of the day before the applicable bid opening (which estimate, may at the Authority's discretion, be provided by a third party), then the Authority shall have the right, in its reasonable discretion, to reject the bid of Construction Manager or its Affiliate (even if its bid is the low bid) and require the Self-Performed Work to be re-bid. Any rejection of a bid or required re-bid under this **Subparagraph 4.20.3** shall not be the basis for an increase in the GMP or adjustment to the Construction Schedule.

4.21 PROGRESS MEETINGS; REPORTS

4.21.1 The Construction Manager shall schedule and conduct periodic meetings, at intervals appropriate for the stage of construction, at which the Authority and the Team and their respective agents and representatives, the Architect, the Construction Manager, and appropriate Subcontractors and Suppliers may discuss the status of the Work. The Construction Manager shall prepare and promptly distribute detailed meeting minutes as required by the Authority.

4.21.2 [Reserved]

4.22 WEB BASED PROJECT MANAGEMENT SYSTEM

4.22.1 If the Authority elects, in its sole discretion, to utilize a web-based or other project management system for the Project, the Construction Manager shall each participate to the fullest extent possible in the utilization of the system.

4.22.2 All costs for the Construction Manager's, and Subcontractors' use of the project management system shall be included in the GMP and additional compensation shall not be permitted.

4.22.3 If the Construction Manager's staff (or its Subcontractors) are unfamiliar with the proper use of the project management system, the Construction Manager (and its Subcontractors) shall provide its staff for training without additional compensation under the Contract Documents.

ARTICLE 5
ARCHITECT

5.1 ARCHITECT

5.1.1 Architect's Duties. The duties of the Architect with respect to the Project are found in the Design Services Agreement by and between the Authority and Architect and as otherwise set forth in other Articles of these General Conditions.

ARTICLE 6
ADMINISTRATION OF THE CONTRACT

6.1 ADMINISTRATION OF THE CONTRACT

6.1.1 The Architect will be responsible to coordinate, manage and administer all Design Services of the Architect, the Subconsultants, and any Consultants employed directly by the Authority pursuant to the Design Services Agreement. The Construction Manager will be responsible to coordinate, manage and administer all of the Work, including Work performed by Subcontractors and Suppliers of all tiers. The Construction Manager is further responsible to manage and administer the coordination of the Trade Contractor Work and Vendor Work to be performed by any Trade Contractors or Vendors and to perform such other services related to such Trade Contractors and Vendors that are set forth in the Construction Services Agreement and Exhibits. The Authority shall direct Trade Contractors to comply with the Construction Manager's and administration of the coordination of the Trade Contractor Work and Vendor Work with the Work.

6.1.2 [Reserved]

6.1.3 Communications Facilitating Contract Administration. The Authority will communicate with the Architect and its Subconsultants through its designated representative. Written communications by the Construction Manager with Subconsultants shall be through the Architect. Communications by the Architect with Subcontractors, Sub-Subcontractors and material suppliers shall be through the Construction Manager.

6.1.4 Based on the Architect's observations and evaluations of the Construction Manager's Application for Payment, the Authority shall review the amounts due the Construction Manager and shall issue a Certificate of Payment as deemed appropriate by the Authority in such amounts. The Architect will be responsible to review the Applications for Payment submitted by the Construction Manager and to provide the Authority with certification that the Work included in the Construction Manager's Application for Payment has been completed.

6.1.5 The Architect shall recommend the rejection of Work that the Architect discovers does not conform to the Contract Documents. However, the Architect shall not have the authority to stop the Work on the Project Site. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with **Subparagraphs 15.5.2 and 15.5.3** hereof, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, Suppliers, their agents or employees, or other Persons performing portions of the Work.

6.1.6 As and when directed, the Architect will prepare Construction Change Directives, subject to the approval of the Authority, and may authorize minor changes in the Work as provided in **Paragraph 9.4** hereof.

6.1.7 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion. The Architect will receive and review any and all records and written warranties and related documents required by the Construction Services Agreement or the Contract Documents and assembled by the Construction Manager. The Architect will forward all such documentation to the Authority upon the Architect's review and acceptance. The Architect shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

6.1.8 The Architect will review and approve or take other appropriate action upon the Construction Manager's Submittals such as Shop Drawings, Product Data and Samples. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager as required by the Contract Documents. The Architect's review of the Construction Manager's submittals shall not relieve the Construction Manager of the obligations under **Paragraphs 4.3, 4.5 and 4.12** hereof. 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.

6.1.9 Upon request of the Authority, Claims, disputes and other matters in question relating to the execution or progress of the Work or the interpretation of the Contract Documents may be referred by the Authority to the Architect only for initial recommendation, which the Architect shall render in writing within a reasonable time, not to exceed fifteen (15) days after the date on which such request is made.

6.1.10 Interpretations and recommendations of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and recommendations,

the Architect will endeavor to secure faithful performance by Authority and Construction Manager or Trade Contractor, and will not show partiality to any of them.

6.1.11-6.6.14 [Reserved]

6.1.15 The Architect shall not be responsible for, nor have control or charge of, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Project, and shall not be responsible for the Construction Manager's failure to carry out the Work in accordance with the Contract Documents, provided such failure of the Construction Manager is not caused by the negligent or willful act of the Architect. The Architect shall not be responsible for, nor have control over, the acts or omissions of the Construction Manager, Subcontractors, and any of their agents or employees, or any other Persons performing any of the Work.

6.1.16 [Reserved]

6.2 CLAIMS AND DISPUTES

6.2.1 Definition. A Claim is a demand or assertion by a Person seeking as a matter of right, adjustment or interpretation of terms of an agreement, payment of money, extension of time, or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between the Authority and the Architect, between the Architect and the Construction Manager, or between the Authority and the Construction Manager arising out of or relating to the Contract Documents. Claims must be made by written notice provided by the claimant to the Party against whom the Claim is being made, with a copy to the SDC Group and the Authority. The responsibility to substantiate Claims shall rest with the party making the Claim.

6.2.2 Claims, including those alleging an error or omission by the Architect or Construction Manager will be referred initially to the SDC Group for action as provided in **Paragraph 6.3** hereof. The recommendation by the SDC Group, if any, in response to a Claim shall not be a condition precedent to arbitration or litigation.

6.2.3 Time Limits on Claims. Except as provided in **Subparagraph 6.2.6** below, and except for Claims asserted by the Authority, Claims by any Person that are discovered during the performance of the Work must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, or said Claim shall be deemed waived. In addition to the foregoing, as soon as the claimant recognizes the conditions giving rise to the Claim, claimant shall provide notice of such conditions to the Authority, Architect, and SDC Group and shall use its best efforts to cooperate with the Authority and SDC Group and the Party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of such a Claim. Any additional Claim related to the initial Claim that is made after the initial Claim has been adjusted and dealt with by Contract Revision will not be considered. Claims may also be reserved in writing within the time limits set forth in this **Subparagraph 6.2.3**. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in **Paragraph 6.3** and **Paragraph 6.4** hereof shall not commence until a written notice from the claimant is received by the Authority. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim, and it shall be assumed that the Authority has been prejudiced if it does not receive said information.

6.2.4 Continuing Contract Performance. Pending final resolution of a Claim, unless otherwise agreed in writing, the Architect and Construction Manager shall proceed diligently with performance of their respective Design Services and Work, and the Authority shall continue to make payments in accordance with the Contract Documents. In the event the Architect or Construction Manager fails to diligently proceed with their respective Design Services or Work during a period of dispute resolution, the Authority may procure necessary replacement services or work and back-charge all associated costs to the non-performing party.

6.2.5 Waiver of Claims: Progress and Final Payment. The making of a progress payment by the Authority shall constitute a waiver of any right to make Claims by the Construction Manager occurring prior to the time covered by such progress payment except those Claims that have been submitted or reserved pursuant to this **Paragraph 6.2**. The making of final payment shall constitute a waiver of Claims by the Construction Manager except those Claims that may either arise from events occurring after receipt of final payment by the Authority or Claims which have been submitted or reserved pursuant to this **Paragraph 6.2**.

6.2.6 Injury or Damage to Person or Property. If during the performance of the Work any member of the Project Team suffers injury or damage to person or property because of an act or omission of any other member of the Project Team, such other party's employees or agents, or others for whose acts such member of the Project Team is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other member of the Project Team within a reasonable time not exceeding twenty-one (21) days after first observance of the injury or damage. The notice shall provide sufficient detail to enable the other members of the Project Team to investigate the matter.

6.2.7 Claims for Concealed or Unknown Conditions. If conditions are encountered at the Project Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents and (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than fourteen (14) days after first observance of the conditions. The Authority, with the assistance of the Architect, shall promptly investigate such conditions and, if they meet the conditions described above and cause a material increase or decrease in the GMP or Contract Time for performance of any part of the Work, the Authority shall recommend an equitable adjustment in the GMP or Contract Time, or both. If the Authority,

with the assistance of the Architect, determines that the conditions at the Project Site do not meet the conditions described above and that no change in the terms of the Contract Documents is justified, the Authority shall so notify the Construction Manager in writing, stating the reasons. If the Authority and Construction Manager cannot agree to an adjustment in the GMP or Contract Time, the adjustment shall be subject to further proceedings pursuant to **Paragraph 6.4** hereof.

6.2.8 Claims for Additional Cost. If the Construction Manager wishes to make a Claim for an increase in the GMP, written notice to the Authority as strictly set forth under this **Paragraph 6.2** is required and shall be given before the Construction Manager proceeds to execute the Work or the Construction Manager's Claim shall be deemed waived. Any Work completed by the Construction Manager without the proper notice to and approval by the Authority will not be considered or approved as a change to the GMP. Prior notice is not required for Claims relating to an emergency endangering life or property arising under **Paragraph 12.3** hereof. If the Construction Manager believes additional cost above the GMP are involved for reasons including but not limited to (1) written interpretation from the Architect, (2) an order by the Authority to stop the Work where the Construction Manager was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) other reasonable grounds, the Claim shall be filed in accordance with the procedure established herein.

6.2.9 Claims for Additional Time.

- .1** If the Construction Manager wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given within the time period specified in **Subparagraph 6.2.3** hereof or said Claim shall be deemed waived. The Construction Manager's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work and the Construction Schedule. In the case of a continuing delay only one Claim is necessary.
- .2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the Construction Schedule.

6.3 REVIEW OF CLAIMS AND DISPUTES

6.3.1 The SDC Group, on behalf of the Authority, will review all Claims once submitted by the Construction Manager and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the SDC Group expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim, (5) suggest a compromise, or (6) not take any of the above actions, in which case the Claim shall be deemed denied. The Authority may also, but is not obligated to, notify the Construction Manager's surety, if any, of the nature and amount of the Claim.

6.3.2 If a Claim submitted to the SDC Group has been resolved, the Authority will prepare or obtain appropriate documentation to memorialize and process the resolution.

6.3.3 If a Claim submitted to the SDC Group has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the SDC Group, the Authority will, in a timely fashion, notify the parties in writing that the SDC Group's recommendation will be made within seven (7) days. Upon expiration of such time period, the SDC Group will render to the parties its final recommendation relative to the Claim including any change in the GMP or Contract Time or both. The parties may then (1) agree to resolve the Claim or (2) proceed pursuant to **Paragraph 6.4** hereof. If the SDC Group's recommendation is not submitted within 30 days of the SDC Group's receipt of the Claim, the Claim shall be denied.

6.4 DISPUTE RESOLUTION

6.4.1 Mediation. Claims, disputes, or other matters in controversy arising out of or related to the Contract Documents shall be subject to mediation as a condition precedent to binding dispute resolution. The parties shall submit a written demand for mediation to the Authority, which shall describe in detail the facts and circumstances of the dispute. The Authority shall designate a neutral third party to serve as mediator. The mediator shall hear the matter in Minneapolis, Minnesota, and provide an informal opinion and advice, none of which shall be binding on the parties involved in the dispute. The opinion shall be submitted to the parties in dispute within twenty (20) days of the mediator hearing the dispute. The parties in dispute will then agree within ten (10) days to resolve the dispute pursuant to the mediator's advice or submit the matter to arbitration pursuant to these General Conditions. The mediator's costs shall be shared equally by the parties in the dispute. The request to mediate may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court Order. If an arbitration is stayed pursuant to this **Subparagraph 6.4.1**, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

6.4.2 Claims Subject to Arbitration. Any Claim subject to, but not resolved by, mediation shall be subject to arbitration, which shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules ("AAA Rules") in effect as of the date of this Construction Services Agreement. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. All proceedings set forth under this **Paragraph 6.4** shall be conducted in Minneapolis, Minnesota.

6.4.3 Notices for Arbitration. Notice of Demand for Arbitration shall be filed, in writing, with the other party to the applicable agreement, with any party to be joined pursuant to **Subparagraph 6.4.6** hereof, and with the American Arbitration Association, the

Authority, Construction Manager, and the Architect, to the extent they are not otherwise a party to the arbitration. At the Authority's election, and its sole discretion, it may invoke application of Fast Track Procedures under the AAA Rules for any such arbitration proceedings initiated under the Contract Documents. The Project Team acknowledges and agrees that Minn. Stat. § 544.42 does not apply to this Project.

6.4.4 Contract Performance During Arbitration. During arbitration proceedings, the Authority, Architect, Construction Manager and any Subcontractor or Subconsultant shall comply with **Subparagraph 6.2.4** hereof.

6.4.5 When Arbitration May Be Demanded. A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or repose. For statute of limitations purposes, receipt of a written demand for arbitration by the Person administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

6.4.6 Consolidation or Joinder. Any arbitration shall include, by consolidation or joinder, the Construction Manager, Architect, Subcontractors, Suppliers, Subconsultants, Trade Contractors, and other Persons bound to arbitrate according to this **Paragraph 6.4** if substantially involved in a common question of fact or law. The foregoing agreement to arbitrate and consolidation and joinder shall be specifically enforceable under Applicable Laws in any court having jurisdiction thereof. Any contract between the Construction Manager and any Subcontractor and Supplier and contracts between Subcontractors and Suppliers and lower tiers of Sub-Subcontractors and suppliers shall include provisions for arbitration, consolidation, and joinder consistent with this **Paragraph 6.4**.

6.4.7 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with Applicable Laws in any court having jurisdiction thereof.

6.4.8 Litigation of Third Party Claims. If a third party who is not a member of the Project Team sues a member of the Project Team, the Authority, or Team in a court of law ("**Third Party Suit**"), then the Authority, or the Team as applicable, shall have the absolute discretion to join in the Third Party Suit members of the Project Team who are involved in common questions of law or fact or whose participation is necessary to provide complete relief in the Third Party Suit, and the Authority, and the Team as applicable, have the absolute discretion to decide to waive and not require arbitration of Claims involving the Third Party Suit as otherwise provided in this Construction Services Agreement. The Project Team hereby consents to jurisdiction and venue in any court in which the suit is commenced or to which such Third Party Suit is removed.

ARTICLE 7 SUBCONTRACTORS

7.1 DEFINITIONS

7.1.1 A Subcontractor is a person or entity who has a direct contract with the Construction Manager to perform a portion of the Work at the Project Site. The term "**Subcontractor**" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Trade Contractor who is a party that has a direct contract with the Authority to perform a portion of the Work at the Project Site; provided, however, that if the Authority assigns a Trade Contract to the Construction Manager, the Trade Contractor shall then be a Subcontractor.

7.1.2 A Sub-Subcontractor is a person or entity of any tier who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Project Site. The term "**Sub-Subcontractor**" is referred to throughout the Contract Documents as if singular in number and means a Sub-Subcontractor or an authorized representative of the Sub-Subcontractor.

7.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

7.2.1 In accordance with the Construction Schedule, the Construction Manager shall furnish the Authority, in writing, with (1) the name, trade and subcontract amount of all persons and entities proposed as Subcontractors, and (2) the names of all persons or entities proposed as Suppliers of the material or equipment identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. The Authority will promptly reply to the Construction Manager in writing stating whether or not the Authority, after due investigation, has reasonable objection to any such proposed person or entity.

7.2.2 The Construction Manager shall not contract with a proposed person or entity to whom the Authority has made reasonable and timely objection. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has made reasonable objection.

7.2.3 If the Authority has reasonable objection to a person or entity proposed by the Construction Manager, the Construction Manager shall propose another to whom the Authority has no reasonable objection.

7.2.4 The Construction Manager shall not change a Subcontractor or Supplier previously selected without the prior written approval of the Authority.

7.3 SUBCONTRACTUAL RELATIONS

7.3.1 By written agreement, the Construction Manager shall require each Subcontractor or Supplier, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by all of the terms of Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager, by these Contract Documents, assumes toward the Authority and Architect. Each Subcontract shall preserve and protect the rights of the Authority and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor or Supplier so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor or Supplier, unless specifically provided otherwise in the Subcontract, the benefit of all rights, remedies, and redress against the Construction Manager that the Construction Manager has against the Authority under the Contract Documents. The Construction Manager shall require each Subcontractor and Supplier to enter into similar agreements with Sub-Subcontractors and Sub-Suppliers. The Construction Manager shall make available to each proposed Subcontractor and Supplier, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor and Supplier will be bound, and, upon written request of the Subcontractor or Supplier, identify to the Subcontractor or Supplier terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Subcontractors and Suppliers shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors and Sub-Suppliers.

7.3.2 All Subcontracts shall be in writing and shall specifically provide that the Authority and the Indemnitees are intended third party beneficiaries of such subcontracts.

7.3.3 The Authority shall have the right to cause the Construction Manager to terminate for convenience any Subcontract with a Subcontractor, Supplier, Sub-Subcontractor, or any other Person with whom the Construction Manager has a contractual relationship for the Work. Termination by the Authority as described in this **Subparagraph 7.3.3** shall be for the convenience of the Authority and shall be in the sole and absolute discretion of the Authority. Such termination shall occur with five (5) days written notice by the Authority to the Construction Manager, and the Authority shall compensate the Construction Manager only for actual expenditures of the Subcontractor, Supplier, Sub-Subcontractor, or other Person with whom the Construction Manager had a contractual relationship incurred in the interest of the Work to the date of termination and shall not include any costs for profit, overhead, damages, or demobilization beyond the date of written notice of termination.

7.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

7.4.1 Each Subcontract for a portion of the Work is assigned by the Construction Manager to the Authority provided that:

- .1** assignment is effective only after termination of the Construction Services Agreement by the Authority or stoppage of Work by the Authority as provided in the Contract Documents and only for those Subcontracts which the Authority accepts by notifying the Subcontractor in writing in the Authority's sole discretion; and
- .2** assignment is subject to the prior rights of the Construction Manager's surety, obligated under bonds relating to the Construction Services Agreement.

7.4.2 If the Work in connection with a Subcontract has been suspended for more than sixty (60) days after termination of the Construction Services Agreement by the Authority pursuant to Contract Documents, and the Authority accepts assignment of such Subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

7.4.3 Each Subcontract shall specifically provide that the Authority shall only be responsible to the Subcontractor for those obligations of the Construction Manager that accrue subsequent to the Authority's exercise of any rights under this conditional assignment.

ARTICLE 8 CONSTRUCTION BY AUTHORITY

8.1 AUTHORITY'S RIGHT TO PERFORM CONSTRUCTION

8.1.1 [Reserved].

8.1.2 The Authority reserves the right to perform construction or operations related to the Project with the Authority's own forces and to award separate Trade Contracts or Vendor Contracts in connection with other portions of the Project or other construction or operations on the Project Site under conditions identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation.

8.1.3 When Trade Contracts or Vendor Contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Construction Manager" in the Contract Documents in each case shall mean the applicable Trade Contractor or Vendor.

8.1.4 The Construction Manager shall be responsible for managing and administering the coordination and integration of the Trade Contractor Work or Vendor Work being performed at the Project Site by Trade Contractors or Vendors with the Work. The Construction Manager shall establish a complete Construction Schedule, which shall be coordinated with the schedules provided by

the Trade Contractors and Vendors and include all logical relationships between the Work and the Trade Contractor Work or Vendor Work, if any. The Construction Manager shall review and periodically update the Construction Schedule to monitor, track and control the progress of the Work, and to facilitate the coordination of and assist timely performance of the Trade Contractor Work or Vendor Work where the Work is logically dependent upon such timely performance. The Construction Manager shall make any revisions to the Construction Schedule deemed necessary for the Work or the Trade Contractor Work or Vendor Work after a joint review and mutual agreement with the Authority and affected Trade Contractor or Vendor. The resulting Construction Schedule shall then constitute the Construction Schedule to be used by the Construction Manager, Trade Contractors, Vendors, and the Authority until subsequently revised. The Trade Contractors, Vendors and Construction Manager shall cooperate with each other so as to avoid delay, interference or disruption to either the Work or the Trade Contractor Work or Vendor Work.

8.1.5 Assignment of Vendor or Trade Contracts. In order to maintain the Master Project Schedule, the Authority may purchase materials or equipment directly from Vendors or Trade Contractors before the Construction Manager's GMP Proposal has been accepted by the Authority and the Construction Manager has been approved to start the Construction Phase Services. In the Authority's sole discretion, the Authority may assign to the Construction Manager, and the Construction Manager shall accept such assignment, at which time the Trade Contractor or Vendor shall become a Subcontractor of the Construction Manager, and the Construction Manager shall assume, and shall solely fulfill and be responsible for, all to the liabilities and obligations of the Trade Contractor or Vendor that the Authority had prior to the assignment. Except as set forth in **Paragraph 3.4** hereof, the Construction Manager shall be responsible and liable for such assigned Vendor or Trade Contracts, if any, as if the Construction Manager were the original purchaser of the Vendor Work or Trade Contractor Work. If the Authority accepts the Construction Manager's GMP Proposal, said acceptance will simultaneously accomplish and effect the assignment of all executed Vendor Contracts and Trade Contracts to the Construction Manager, except as otherwise stated in the Authority's acceptance of the GMP Proposal. Except as otherwise provided in the Contract Documents, the GMP includes, without limitation, all costs and expenses in connection with delivery, handling, storage, insurance, installation and testing of items covered in any assigned Vendor Contracts or Trade Contracts. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any Vendor Contracts or Trade Contracts assigned to the Construction Manager, unless the Contract Documents specifically and expressly provide otherwise.

8.2 MUTUAL RESPONSIBILITY

8.2.1 The Construction Manager shall afford the Authority, Trade Contractors and Vendors reasonable opportunity for introduction and storage of their materials and equipment and performance of the Trade Contractor Work or Vendor Work at the Project Site. The Construction Manager shall properly and fully connect and coordinate the Work with the Trade Contractor Work or Vendor Work as required by the Contract Documents. The Construction Manager, Trade Contractors and Vendors are required to schedule and coordinate, each with respect to the other, their respective activities at the Project Site so as not to interfere with or to delay the Work or the work of such Trade Contractors or Vendors. The Construction Manager agrees to provide such coordination and scheduling without increase in the GMP.

8.2.2 If part of the Construction Manager's Work depends for proper execution or results upon a Trade Contractor's Work or Vendor's Work, the Construction Manager shall, prior to proceeding with that portion of the Construction Manager's Work, inspect and promptly report in writing to the Authority and any such Trade Contractor or Vendor apparent discrepancies or defects in the Trade Contractor's Work or Vendor's Work that would render it unsuitable for proper execution and results of the Construction Manager's Work. Failure of the Construction Manager so to report in writing shall constitute an acknowledgment that the Trade Contractor's Work or Vendor's Work is fit and proper to receive the Work of the Construction Manager, except as to latent defects not then reasonably discoverable.

8.2.3 The Construction Manager shall reimburse the Authority for costs incurred by the Authority which are payable to a Trade Contractor or Vendor because of delays, improperly timed activities, defective Work or other errors or omissions of the Construction Manager.

8.2.4 The Construction Manager shall promptly remedy damage caused by the Construction Manager to completed or partially completed construction or to property of the Authority or Work of a Trade Contractor or Vendor as provided in **Subparagraph 12.2.5**.

8.2.5 Claims and other disputes and matters in question between the Construction Manager and a Trade Contractor or Vendor shall be subject to the provisions of **Paragraphs 6.2 - 6.4** provided the Trade Contractor or Vendor has reciprocal obligations.

ARTICLE 9 CHANGES IN THE CONSTRUCTION MANAGER'S WORK

9.1 CHANGES

9.1.1 Changes in the Work shall only be accomplished after execution of the Construction Services Agreement, and without invalidating the Contract Documents, by Contract Revision, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this **Article 9** and elsewhere in the Contract Documents.

9.1.2 A Contract Revision shall be based upon agreement between the Authority and Construction Manager. A Construction Change Directive must be signed and issued by the Authority and Architect. An order for a minor change in the Work may be issued by the Architect subject to approval of the Authority.

9.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall proceed promptly, unless otherwise provided in the Contract Revision, Construction Change Directive, or order for a minor change in the Work.

9.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon in writing, and if quantities originally contemplated are so changed in a proposed Contract Revision or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Authority or Construction Manager, the applicable unit prices shall be equitably adjusted.

9.2 CONTRACT REVISIONS

9.2.1 A Contract Revision is a written instrument prepared by the Authority and signed by the Authority, Architect, and Construction Manager, stating their agreement upon all of the following:

- .1** a change in the Construction Manager's Work;
- .2** the amount of the adjustment in the GMP, if any;
- .3** the extent of the adjustment in the Contract Time, if any; and
- .4** the updated Schedule of Values.

9.2.2 Methods used in determining adjustments to the GMP may include those listed in **Subparagraph 9.3.2** hereof.

9.2.3 Except as otherwise set forth therein, any executed Contract Revision shall constitute a final settlement of all matters relating to or arising out of the change in the Work which is the subject of the Contract Revision, including all direct and indirect costs associated with such change and any and all adjustments to the GMP and the Construction Schedule.

9.2.4 Except as permitted in **Article 6, Paragraph 9.3**, and **Subparagraph 11.7.2** hereof, a change in the GMP or the Contract Time shall be accomplished only by Contract Revision. Accordingly, unless a written notice of a Claim has been properly made pursuant to **Article 6** before the allegedly extra Work is started, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Authority has been unjustly enriched by an alteration of or addition to the Work, shall be the basis of any Claim to an increase in any amounts due under the Contract Documents or a change in the Contract Time.

9.3 CONSTRUCTION CHANGE DIRECTIVES

9.3.1 A Construction Change Directive is a written order prepared by the Architect, after full consultation with and signed by the Authority, directing a change in the Work. The Authority may by Construction Change Directive, without invalidating the Contract Documents, order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions, or other revisions, the GMP and Contract Time being adjusted if appropriate. If any Construction Change Directive proposes an adjustment, if any, in the GMP or Contract Time, or both, then Construction Manager shall advise the Authority and the Architect if Construction Manager plans to use the Construction Manager's Contingency to fund said adjustment. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Contract Revision. No adjustment to the Contract Time shall be made or allowed if the Construction Change Directive does not cause a delay to the critical path of the Construction Schedule.

9.3.2 If the Construction Change Directive provides for an adjustment to the GMP, the adjustments shall be based on one of the following methods:

- .1** mutual acceptance of a lump sum properly itemized and supported by efficient substantiating data to permit evaluation;
- .2** unit prices stated in the Contract Documents or subsequently agreed upon;
- .3** Costs of the Work as provided in the Construction Services Agreement; or
- .4** as provided in **Subparagraph 9.3.5** hereof.

9.3.3 Upon receipt of a properly authorized Construction Change Directive, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Authority of the Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the GMP or Contract Time.

9.3.4 A Construction Change Directive signed by the Construction Manager indicates the agreement of the Construction Manager therewith, including adjustment in GMP and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Contract Revision.

9.3.5 If the Construction Manager does not respond promptly or disagrees with the method for adjustment in the GMP, the method and the adjustment shall be determined by the Authority on the basis of reasonable Costs of the Work and savings attributable to the change, including, in case of an increase in the GMP, overhead and profit as provided in **Subparagraph 9.5.1** hereof.

Deductive changes shall be determined by subtracting from the Guaranteed Maximum Price, the greater of the Construction Manager's bid associated with the deducted Work or the Cost of the Work associated with the deducted Work plus, in either case, overhead and profit as provided in **Subparagraph 9.5.1** hereof. In such case, and also under **Subparagraph 9.3.2.3** hereof, the Construction Manager shall keep and present, in such form as the Authority may prescribe, an itemized accounting together with appropriate supporting data of any requested change. Costs for the purposes of this **Subparagraph 9.3.5** shall be determined in accordance with the provisions of the Construction Services Agreement for determining the Cost of the Work.

9.3.6 Pending final determination of cost, amounts not in dispute may be included in Applications for Payment. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

9.3.7 If the Construction Manager does not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be subject to the procedure for Claims under **Paragraph 6.3 and 6.4** hereof.

9.3.8 When the Construction Manager agrees with the determination made by the Authority concerning the adjustments in the GMP and Contract Time, or otherwise reaches agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Contract Revision.

9.3.9 Overtime, when specifically requested authorized by the Authority and not as an Extraordinary Measure, shall be paid for by the Authority on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Authority for overtime.

9.4 MINOR CHANGES IN THE WORK

9.4.1 The Architect may, with the prior approval of the Authority, order minor changes in the Work not involving adjustment in the GMP, the quality of the Work, or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Authority, Architect and Construction Manager. The Construction Manager shall carry out such written orders promptly.

9.5 AGREED OVERHEAD AND PROFIT RATES

9.5.1 For any adjustments to the GMP which are based on other than the unit prices method, the Construction Manager agrees to charge, and accept, as payment for overhead and profit, the Construction Manager Fee as described in **Exhibit 3** of the Construction Services Agreement. For any adjustments to the GMP which are based on the unit prices method, no overhead or profit shall be charged.

ARTICLE 10 **TIME**

10.1 DEFINITIONS

10.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

10.1.2 The date of commencement of the Work is the date established in the Construction Services Agreement. The date shall not be postponed by the failure to act of the Construction Manager or Persons for whom the Construction Manager is responsible.

10.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with **Paragraph 11.8** hereof.

10.2 PROGRESS AND COMPLETION

10.2.1 Time limits stated in the Contract Documents are of the essence. By executing the Construction Services Agreement the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

10.2.2 The Construction Manager shall not knowingly, except by agreement or instruction of the Authority in writing, prematurely commence the Work prior to the effective date of insurance required by **Article 13** hereof to be furnished by the Construction Manager. The date of commencement of the Work shall not be changed by the effective date of such insurance.

10.2.3 The Construction Manager shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

10.3 DELAYS AND EXTENSIONS OF TIME

10.3.1 If the Construction Manager is delayed at any time in progress of the Work by changes properly authorized and ordered by the Authority in the Work, or by industry wide labor disputes, fire, unusual delay in deliveries of materials outside the control of a Supplier or Vendor, unavoidable casualties or other causes beyond the Construction Manager's control, or by other causes which the Authority determines may justify delay, then the Contract Time shall be equitably adjusted by Contract Revision to the extent such delay extends the critical path of the Construction Schedule and the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Construction Manager is not entitled to an extension in the Contract Time under the Contract

Documents. The Construction Manager further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been reasonably avoided, by the Construction Manager, (ii) could not be reasonably limited or avoided by the Construction Manager's timely notice to the Authority of the delay or reasonable likelihood that a delay will occur, or (iii) is of a duration not less than one (1) day.

10.3.2 Claims relating to time shall be made in accordance with applicable provisions of **Paragraph 6.3** hereof.

10.3.3 This **Paragraph 10.3** does not preclude recovery of damages for delay by any party except as may otherwise be provided under other provisions of the Contract Documents.

10.3.4 If the Construction Manager submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Authority to the Construction Manager for any failure or inability of the Construction Manager to so complete the Work shall be created or implied.

10.3.5 The Authority shall have the right to occupy, without prejudice to rights of either party, any completed or Substantially Completed portions of the Work, notwithstanding the fact that time for completion of entire Work, or portions thereof, may not be expired. Occupancy and use by Authority shall not constitute, in itself, acceptance of the Work.

ARTICLE 11 PAYMENTS AND COMPLETION

11.1 PAYMENTS

11.1.1 The GMP is the amount stated in the Construction Management Plan for the Work and is the maximum total amount payable to the Construction Manager for performance of the Work under the Construction Services Agreement.

11.2 SCHEDULE OF VALUES

11.2.1 Upon execution of the Construction Management Plan, the Construction Manager shall submit to the Authority and Architect a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Authority deems necessary. The Authority shall have the right to approve the Construction Manager's format of the Schedule of Values and all subsequent forms of the Schedule of Values. The Schedule of Values shall be used by the Authority and Architect as a basis for reviewing the Construction Manager's Applications for Payment and approving award of subcontracts.

11.2.2 Any Schedule of Values that fails to include sufficient detail, is unbalanced, or exhibits "front-end loading" of the value of the Work shall be rejected. If a Schedule of Values had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve, exclusive of normal retainage, to complete the Work.

11.3 APPLICATIONS FOR PAYMENT

11.3.1 The Construction Manager shall submit to the Authority and Architect an itemized Application for Payment for completed portions of the Work in accordance with the Schedule of Values. Such Application for Payment shall be notarized, if required, and supported by such data substantiating the Construction Manager's right to payment as the Authority may require, such as copies of requisitions from Subcontractors and Suppliers of any tier, and reflecting retainage if provided for elsewhere in the Contract Documents. Such Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives but not yet included in a Contract Revision. Such Applications for Payment shall not intentionally include requests for payment of amounts the Construction Manager does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason unless the Construction Manager has properly performed the Work for which payment is being requested in lieu of the Subcontractor or Supplier. By signing and submitting an Application for Payment, Construction Manager shall represent and warrant that Construction Manager has no knowledge of and waives any Claims, specifically including Claims for additional Time or adjustments to the GMP, based on events or circumstances existing or occurring before the date of the subject Application for Payment, except as specifically stated in said Application or as may have been properly preserved by timely written notice of a Claim as required by the Contract Documents. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Authority:

- .1** A current Construction Manager's waiver of lien or claim for payment and duly executed and acknowledged sworn statement showing all Subcontractors and Suppliers with whom the Construction Manager has entered into Subcontracts, the amount of each such Subcontract, the amount requested for any Subcontractor and Supplier in the requested progress payment, and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all such Subcontractors and Suppliers;
- .2** Duly executed waivers of liens and claims for payment from all Subcontractors, Suppliers, and lower tier Sub-Subcontractors establishing payment or satisfaction of all amounts requested by the Construction Manager on behalf of such entities or persons in the previous Application for Payment;

- .3 Invoices and back-up documentation from any Subcontractor, Supplier, Sub-Subcontractor, or other party to whom the Construction Manager proposes to make payment under that Application for Payment;
- .4 Certified payroll receipts for the Construction Manager's personnel, equipment charge or rental logs, invoices for material purchases, and other documentation requested by the Authority for self-performed Work of the Construction Manager; and
- .5 All information and materials required to comply with the requirements of the Contract Documents, requested by the Authority or reasonably requested by any Lender, Lender's representative and any escrow or disbursement agent or title company, if any, retained by the Authority or any Lender to disburse payments.

11.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work. If approved in advance by the Authority, payment may be made for materials and equipment suitably stored off the Project Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project Site shall be conditioned upon compliance by the Construction Manager with procedures satisfactory to the Authority to establish the Authority's title to such materials and equipment or otherwise protect the Authority's interests, and shall include applicable insurance, storage, and transportation to the Project Site for such materials and equipment stored off the Project Site. Construction Manager shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed Five Million and 00/100 Dollars (\$5,000,000.00) at any time without written approval of the Authority;
- .2 Title to such materials shall be vested in the Authority, as evidenced by documentation satisfactory in form and substance to the Authority, including recorded financing statements, UCC filings, and UCC searches;
- .3 With each Application for Payment, the Construction Manager shall submit to the Authority a written list identifying each location where materials are stored off the Project Site and the value of materials at each location. The Construction Manager shall procure insurance satisfactory to the Authority for materials stored off the Project Site in an amount not less than the total value thereof and shall provide the Authority with satisfactory evidence of such insurance coverage along with the Application for Payment for such materials;
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project Site;
- .5 Representatives of the Authority and the Architect shall have the right to make inspections of the storage areas at any time; and
- .6 Such materials shall be (1) protected from diversion, destruction, theft, and damage to the satisfaction of the Authority and the Architect, (2) specifically marked for use in the Work, and (3) segregated from other materials at the storage facility.

11.3.3 The Construction Manager warrants that title to all Work covered by an Application for Payment will pass to the Authority no later than the time of payment. The Construction Manager further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Authority shall be free and clear of liens, Claims, security interests, or encumbrances in favor of the Construction Manager, Subcontractors, Suppliers, Sub-Subcontractors, or other Persons able to make a Claim by reason of having provided labor, materials, and equipment relating to the Work, except as specifically stated in said Application or as may have been properly preserved by timely written notice of a Claim as required by the Contract Documents.

- .1 To the extent of payments received from the Authority, the Construction Manager further expressly undertakes to defend and indemnify the Authority and the Indemnitees, at the Construction Manager's sole expense with independent counsel of the Authority's choice, against any actions, lawsuits, or proceedings brought against the Authority or any Indemnitee as a result of Claims or liens filed against the Construction Manager, the Work, the Project Site, any improvements thereon, or any portion of the property of the Authority or any Indemnitee, referred to collectively as Liens in **Subparagraphs 11.3.3** and **11.6.6** hereof. To the extent of payments received from the Authority, the Construction Manager hereby agrees to indemnify and hold the Authority and all Indemnitees harmless against any such Liens or claims of Lien and agrees to pay any judgment or Lien resulting from any such actions, lawsuits or proceedings.
- .2 The Authority shall release any payments withheld due to a Lien if the Construction Manager obtains security acceptable to the Authority or a bond which is: (1) issued by a surety acceptable to the Authority, (2) in form and substance satisfactory to the Authority, and (3) in an amount not less than One Hundred Fifty percent (150%) of such Lien claim. By posting a bond or other acceptable security, however, the Construction Manager shall not be relieved of any responsibilities or obligations under this **Paragraph 11.3**, including, without limitation, the duty to defend and indemnify the Authority and all Indemnitees. The cost of any premiums incurred in connection with such bonds or security shall be the responsibility of the Construction Manager and shall not be reimbursable as a Cost of the Work.

11.4 APPROVAL OF APPLICATIONS FOR PAYMENT

11.4.1 The Construction Manager shall submit a complete and properly prepared Application for Payment to the Authority and Architect no later than the twenty-fifth (25th) day of the month (or as agreed to between the Authority and Construction Manager in writing). If an Application for Payment is received at any time later than the twenty-fifth (25th) day of the month it will be processed the following month. The Authority, Architect, and Construction Manager will meet during the last five (5) days of the month to review the Construction Manager's Application for Payment. The Construction Manager will make corrections to the Construction Manager's Application for Payment as agreed to by the Authority and Construction Manager and re-submit the Application for Payment by the last business day of the month when required by the Authority. By the fifteenth (15th) day of the following month, the Architect and Authority shall have reviewed the Construction Manager's Application for Payment, and the Architect shall issue a Certificate for Payment to the Authority in such amounts as deemed appropriate by the Architect and Authority or notify the Construction Manager in writing of the reasons for withholding approval in whole or in part as provided in **Paragraph 11.5** hereof.

11.4.2 The issuance of approval of the Application for Payment by the Authority is based on the Architect's observations at the Project Site and the data comprising the Application for Payment that 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 to an evaluation of the Work for conformance with the Contract Documents and to specific qualifications expressed by the Architect. The issuance of approval of the Application for Payment will further constitute a representation and certification by the Architect to the Authority that the Construction Manager is entitled to payment in the amount approved. However, the issuance of a Certificate for Payment will not be a representation that the Authority has (1) made exhaustive or continuous on-site observations to check the quality or quantity of the Work or (2) reviewed construction means, methods, techniques, sequences, or procedures.

11.5 DECISIONS TO WITHHOLD CERTIFICATION

11.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Authority, if in the Architect's opinion the representations to the Authority required by **Subparagraph 11.4.2** hereof cannot be made. If the Architect is unable to approve payment in the amount of the Application for Payment, the Architect will notify the Construction Manager and Authority as provided in **Subparagraph 11.4.1** hereof. If the Construction Manager and Authority cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Authority is able to approve. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Authority from loss because of:

- .1 Defective Work not remedied;
- .2 Third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 Failure of the Construction Manager to properly pay Subcontractors or Suppliers;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .5 Loss or damage incurred by the Authority or another party;
- .6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 Persistent failures to carry out the Work in accordance with the Contract Documents.

11.5.2 When the above reasons for withholding payment are removed as approved in writing by the Authority, a Certificate for Payment will be issued by the Architect for amounts previously withheld.

11.5.3 If the Construction Manager disputes any determination by the Authority or Architect with regard to any Application for Payment, the Construction Manager nevertheless expeditiously shall continue to prosecute the Work.

11.5.4 The Authority shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided that the Work for which payment is being withheld shall have been rejected by the Authority and Architect due to non-compliance with the Contract Documents.

11.6 PROGRESS PAYMENTS

11.6.1 The Authority shall make payment to the Construction Manager for an approved portion of the Construction Manager's Fee and other approved Costs of the Work to be reimbursed, less all applicable retentions and withholdings, not later than thirty (30) days after the Authority has received the Architect's Certificate for Payment. To the extent necessary to protect the Authority from Claims, the Authority may make payment by joint payment to the Construction Manager and the Subcontractors and Suppliers for Work performed by such Subcontractors and Suppliers. Payments by the Authority shall not constitute approval or acceptance of any item of cost in the Application for Payment. The Authority shall pay interest of one and one-half percent (1.5%) per month (or any part of a month) to the Construction Manager on an undisputed amount not paid to the Construction Manager within thirty (30) days after the Authority has received the Architect's Certificate for Payment. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Authority shall pay the actual interest penalty due to the Construction Manager in accordance with Minnesota Statutes.

11.6.2 If the Authority makes payment directly to the Construction Manager for Work performed by Subcontractors, then the Construction Manager shall promptly pay each Subcontractor, in accordance with the approved Application for Payment submitted by the Construction Manager, on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Subcontractor on account of such Subcontractor's portion of the Work. The Construction Manager must pay any Subcontractor within ten (10) days of the Construction Manager's receipt of payment from the Authority for undisputed services provided by the Subcontractor. The Construction Manager must pay interest of one and one-half percent (1.5%) per month (or any part of a month) to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Construction Manager shall pay the actual penalty due to the Subcontractor in accordance with Minnesota Statutes. If the Authority makes joint payment to Subcontractors as provided in **Subparagraph 11.6.1** hereof, then the Authority, through the Construction Manager, shall promptly pay each Subcontractor through a joint payment to Construction Manager and each Subcontractor, in accordance with the approved Application for Payment submitted by the Construction Manager, on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Subcontractor on account of such Subcontractor's portion of the Work. The Construction Manager shall, by appropriate agreement with the Construction Manager and each Subcontractor, require each Subcontractor to make payments to Subcontractors in similar manner upon receipt of payment from the Construction Manager.

11.6.3 [Reserved]

11.6.4 As the Project is a public project, the Authority shall have no obligation to pay or to see to the payment of money to a Subcontractor or Supplier.

11.6.5 Payment to Suppliers shall be treated in a manner similar to that provided in **Subparagraphs 9.6.2 and 9.6.4**.

11.6.6 An approved Application for Payment, Certificate for Payment, a progress payment or partial payment of any kind, or partial or entire use or occupancy of the Project by the Authority shall not constitute, nor shall it be construed as, acceptance or approval of any portion of the Work not in accordance with the Contract Documents or to otherwise relieve the Construction Manager of any of its obligations hereunder with respect thereto.

11.6.7 If required by the Authority or any Lender, all payments to the Architect, Construction Manager, Subcontractors, or Suppliers shall be made through a construction escrow established with an Escrow Agent mutually acceptable to the Authority and such Lender. The Construction Manager hereby agrees to execute an Escrow Agreement which shall be (1) consistent with the requirements of the Contract Documents, except as the standard procedures of the Escrow Agent may otherwise require, (2) structured to provide that the Escrow Agent may disburse funds directly to Subcontractors or to the Construction Manager and Subcontractors payable jointly, if so directed by the Authority, and (3) otherwise in a form and substance reasonably satisfactory to the Authority.

11.6.8 If the Authority is entitled to reimbursement or payment from the Construction Manager under or pursuant to the Contract Documents such payment shall be made promptly by the Construction Manager upon demand from the Authority. Notwithstanding anything contained in the Contract Documents to the contrary, if the Construction Manager fails to promptly make any payment to the Authority which is due to the Authority, or the Authority incurs any costs and expenses to cure any default of the Construction Manager or to correct defective Work, the Authority shall have an absolute right to offset such amount against the GMP or any progress payment otherwise due and may, in the Authority's sole discretion, elect either to: (1) deduct an amount equal to that which the Authority is entitled from any payments then or thereafter due the Construction Manager, or (2) issue a written notice to the Construction Manager reducing the GMP by an amount equal to that to which the Authority is entitled.

11.7 FAILURE OF PAYMENT

11.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Construction Manager, by the fifteenth (15) day of the month following Construction Manager's timely submission of a complete and properly completed Application for Payment, or if the Authority does not make payment of the amount approved by the Architect within thirty (30) days after issuance of the Certificate for Payment, or if the Authority does not make payment of an arbitration award within thirty (30) days of its confirmation after conclusion of any appeal, then the Construction Manager may, within ten (10) additional days' written notice to the Authority, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the GMP shall be increased by the amount of the Construction Manager's reasonable costs of shut-down, delay, and start-up which shall be accomplished as provided in **Article 9** hereof.

11.8 SUBSTANTIAL COMPLETION

11.8.1 "Substantial Completion" or "Substantially Complete" shall mean the Work (or separable units or phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for opening to the general public and full occupancy or use by Authority (it being understood that, without limitation of the foregoing, all suites, concessions and other income-generating areas and all areas serving the general public shall be ready for full operation without material inconvenience or discomfort). A minor amount of Work, as determined by and at the discretion of Authority, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or correction of minor exterior work that cannot be completed due to weather conditions, will not delay determination of Substantial Completion. For purposes of Substantial Completion, specified areas of the entire Work or Project may be individually judged as Substantially Complete. In no event shall Substantial Completion be deemed to

have occurred unless such certificates or licenses as required for opening of the Project to the general public have been issued to Authority.

11.8.2 When the Construction Manager considers that the Work, or a portion thereof which the Authority and Architect agree to accept separately, is Substantially Complete, the Construction Manager shall prepare and submit to the Architect and the Authority a comprehensive list (the "punch list") of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the punch list. Failure to include an item on the punch list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The Authority and the Architect reserve the right to add to the punch list within thirty (30) days after receipt of an acceptable punch list from the Construction Manager. Upon receipt of the Construction Manager's punch list, the Architect and Authority will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the inspection discloses any item, whether or not included on the Construction Manager's punch list, which is not in accordance with the requirements of the Contract Documents, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Authority. The Construction Manager shall then submit a request for another inspection by the Architect and Authority to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Architect, with assistance from the Authority, will prepare a Certificate of Substantial Completion. The date of Substantial Completion shall establish responsibilities of the Authority and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Construction Manager shall finish all items on the punch list accompanying the Certificate of Substantial Completion which shall identify all non-conforming, defective, and incomplete Work. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Authority and the Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate.

11.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon submission of an Application of Payment by the Construction Manager and its certification by the Architect, as provided in **Paragraphs 11.3, 11.4 and 11.5** hereof, the Authority shall in turn make payment to the Construction Manager for all sums due upon Substantial Completion. Construction Manager agrees that the Authority shall hold back one-hundred fifty percent (150%) of the cost of the punch list items as determined by the Architect and Authority as retainage for performance of such punch list work.

11.9 PARTIAL OCCUPANCY OR USE

11.9.1 The Authority may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated to be Substantially Complete by the Construction Schedule, provided such occupancy or use is consented to by the insurer as required under **Subparagraph 13.3.11** and authorized by Governmental Authorities. In addition, such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Authority and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Construction Manager considers a portion of the Work to be Substantially Complete, the Construction Manager shall prepare and submit a punch list to the Architect and the Authority as provided under **Subparagraph 11.8.2** hereof. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by decision of the Authority.

11.9.2 Immediately prior to such partial occupancy or use, the Authority, Construction Manager, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

11.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

11.10 FINAL COMPLETION AND FINAL PAYMENT

11.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect and Authority find the Work acceptable under the Contract Documents and the Work fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Construction Manager and noted in said final Application for Payment is due and payable. The Architect shall issue such Certificate for Payment. The final Certificate for Payment will constitute a further representation that conditions listed in **Subparagraph 11.10.2** hereof as conditions precedent to the Construction Manager's being entitled to final payment have been fulfilled. All warranties and guarantees required under the Construction Services Agreement shall be provided as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Authority.

11.10.2 Neither final payment nor any remaining retained percentage shall become due until the Construction Manager submits to the Authority (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Authority or the Authority's property might be responsible or encumbered, less amounts withheld by Authority, have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and that Construction Manager will give the Authority and Team not be canceled or allowed to expire until at least thirty (30) days' prior written notice before they are allowed to expire or be cancelled, (3) a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the

Contract Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Authority, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, Claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such forms as may be designated by the Authority. If the Authority has paid the Construction Manager what is due a Subcontractor, but a Subcontractor refuses to furnish a release or waiver required by the Authority, the Authority may require the Construction Manager to furnish a bond satisfactory to the Authority and to indemnify the Authority against such Lien or Claim for payment. If such Lien or Claim for payment remains unsatisfied after payments are made, the Construction Manager shall pay to the Authority all money that the Authority may be compelled to pay in discharging such Lien or Claim, including all costs and reasonable attorneys' fees. The Authority shall have the right to hold back one hundred fifty percent (150%) of the cost of completing any punch list items outstanding as of the final Certificate for Payment.

11.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Construction Manager or by issuance of Contract Revisions affecting final completion, and the Authority so confirms, the Authority shall, upon application by the Construction Manager and certification by the Architect, and without terminating the Construction Services Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance of the Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of Work fully completed and accepted shall be submitted by the Construction Manager to the Authority prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims by the Authority. The making of final payment shall constitute a waiver of claims against the Authority and the Indemnitees to the extent provided in **Subparagraph 6.2.5** hereof.

ARTICLE 12

PROTECTION OF PERSONS AND PROPERTY

12.1 SAFETY PRECAUTIONS AND PROGRAMS

12.1.1 The Construction Manager shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Construction Services Agreement. The Construction Manager is responsible to prepare and administer the Project Safety Program. The Architect shall report any violations of the Project Safety Program that it observes to the Construction Manager and the Authority. If the Authority adopts an Project specific insurance program, the Construction Manager shall coordinate and conform its Project Safety Program with the safety requirements of the Project specific insurance program; **provided, however**, that compliance with the safety requirements in any Project specific insurance program will not relieve the Construction Manager from its obligation to be solely responsible for safety precautions and preventing Project Site accidents.

12.1.2 In addition to its defined meaning, for purposes of this **Paragraph 12.1, "Hazardous Materials"** also means any element, compound, mixture, solution, particle or substance which is or may become dangerous, or harmful to the health and the welfare of life or the physical environment if not used, stored or disposed of in accordance with Applicable Laws, including explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances, any **"PCBs"** or **"PCB items,"** as defined in 40 CFR 761.3, and any **"asbestos,"** as defined in 40 CFR 763.63.

12.1.3 In the event the Construction Manager encounters on the Project Site existing material reasonably believed to be Hazardous Materials which has not been rendered harmless and that presents an unknown and differing site condition pursuant to **Subparagraph 6.2.6** hereof, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Authority in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Authority, and Construction Manager, if in fact the material is a Hazardous Material and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of Hazardous Materials, or when it has been rendered harmless. If the existing Hazardous Material is not an unknown, differing site condition pursuant to **Subparagraph 6.2.6** hereof, the Construction Manager shall be responsible for rendering the Hazardous Material harmless.

12.1.4 [Reserved]

12.2 SAFETY OF PERSONS AND PROPERTY

12.2.1 The Construction Manager shall be solely responsible for taking all reasonable precautions for safety of and shall provide all necessary protection to prevent damage, injury or loss to:

- .1** laborers and employees performing the Work and other persons who may be affected thereby;
- .2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of the Construction Manager or the Construction Manager's Subcontractors or Sub-Subcontractors; and
- .3** other property at the Project Site or adjacent thereto including Trade Contractor Work, Vendor Work, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or placement in the course of construction.

12.2.2 The Construction Manager shall give notices and comply with all Applicable Laws bearing on safety of Persons or property or their protection from damage, injury, or loss.

12.2.3 The Construction Manager shall erect and maintain, as required by existing conditions and the Construction Services Agreement, reasonable safeguards for the safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. The Construction Manager shall also be responsible, as a Cost of the Work, for all measures necessary to protect any property adjacent to the Project and improvements therein.

12.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Construction Manager shall give the Authority and the Architect reasonable advance notice in writing.

12.2.5 The Construction Manager shall promptly remedy damage and loss to property referred to in **Subparagraphs 12.2.1.2 and 12.2.1.3** hereof caused in whole or in part by the Construction Manager, a Subcontractor, a Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible under **Subparagraphs 12.2.1.2 and 12.2.1.3**, hereof, except damage or loss attributable to acts or omissions of the Authority or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations under **Paragraph 4.18** hereof.

12.2.6 The Construction Manager shall designate a responsible member of the Construction Manager's organization at the Project Site whose duty shall be the prevention of accidents. This person shall be the Construction Manager's representative with specific responsibility and experience to manage the Project Safety Program as the primary responsibility in accordance with the provisions of **Subparagraph 4.9.1** hereof.

12.2.7 The Construction Manager shall not load or permit any part of the construction or Project Site to be loaded so as to endanger safety.

12.2.8 When all or a portion of the Work is suspended for any reason, the Construction Manager shall securely fasten down all coverings and protect the Work, as necessary, from injury or damage by any cause.

12.2.9 The Construction Manager shall promptly report in writing to the Authority and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Authority and the Architect.

12.3 EMERGENCIES

12.3.1 In an emergency affecting safety of persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Construction Manager on account of an emergency shall be determined as provided in **Paragraph 6.2** and **Article 9**. As soon as practicable after taking such action, the Construction Manager shall give notice thereof to the Authority and Architect in writing.

ARTICLE 13 INSURANCE AND BONDS

13.1 CONSTRUCTION MANAGER'S LIABILITY INSURANCE

13.1.1 The Construction Manager shall obtain and maintain the Required Insurance as set forth in **Appendix B**, and fully comply with all provisions thereof unless additional insurance is required by a Contract Revision. In addition, Construction Manager shall obtain and maintain, in a company or companies lawfully authorized to do business in the State of Minnesota, such insurance as will protect the Construction Manager and the Authority from claims set forth below which may arise out of or result from the Construction Manager's operations and Work under the Construction Services Agreement and for which the Construction Manager may be legally liable, whether such operations be by the Construction Manager or by a Subcontractor, Sub-Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1** claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Construction Manager's Work;
- .2** claims for damages because of bodily injury, occupational sickness, disease or death of the Construction Manager's employees;
- .3** claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager's employees;

- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Construction Manager, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible and intangible property, including loss of use resulting therefrom whether or not the tangible or intangible property is physically injured or destroyed;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle or equipment;
- .7 claims involving contractual liability insurance applicable to the Construction Manager's obligations under **Paragraph 4.18** hereof; and
- .8 claims for professional liability (errors & omissions) should professional design services be included as part of the Construction Services Agreement.
- .9 claims for damages because of loss of owned or rented capital equipment and tools, including any tools by mechanics.

13.1.2 The Construction Manager shall, for the protection and benefit of the Authority, the Indemnitees, and the Construction Manager, and as part of the Construction Manager's efforts to satisfy the obligation set forth in **Subparagraph 13.1.1** hereof, procure, pay for and maintain in full force and effect, at all times during the performance of the Work until Final Completion and acceptance of the Work or for such duration thereafter as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Authority and in form and substance reasonably satisfactory to the Authority which afford the coverages set forth in **Appendix B** hereto. The Authority does not in any way represent that the insurance or limits of insurance specified herein are sufficient or adequate to protect the Construction Manager, but are merely minimums. In addition to what is specified in this **Article 13** and **Appendix B**, Contractor shall take such steps as it may deem necessary to insure itself against all special and unusual hazards peculiar to this Project.

13.1.3 The costs of all insurance premiums required under this **Paragraph 13.1** and **Appendix B**, shall be included in the Construction Manager's Cost of Work and GMP as set forth in **Exhibit 3** of the Construction Services Agreement, unless the Authority elects to implement an owner controlled insurance program pursuant to **Appendix B**. The costs of all associated deductibles required under this **Paragraph 13.1** and **Appendix B**, shall be included in the Construction Manager's Fee as set forth in **Exhibit 3** of the Construction Services Agreement. The Construction Manager hereby agrees to deliver to the Authority within ten (10) days of the date of the Construction Services Agreement and prior to any equipment or personnel being utilized in connection with the Project or the Work or brought onto the Project Site, certified copies of all insurance policies procured by the Construction Manager under or pursuant to this **Paragraph 13.1** and evidencing the required coverages with limits not less than those specified in **Appendix B**. The receipt by the Authority of such policies does not constitute approval or agreement by the Authority that the insurance requirements of this Construction Services Agreement have been met or complied with. The Authority and the Indemnitees shall be included as additional insureds as set forth in **Appendix B**. The Commercial General Liability Policy, Automobile Policy, and Umbrella/Excess Liability Policy obtained under or pursuant to this **Paragraph 13.1** and **Appendix B**, shall each be primary and non-contributory to any valid and collectible insurance carried separately by Subcontractors of any tier, the Authority, or any of the Indemnitees. Further, the Construction Manager warrants and represents that it will provide that no less than thirty (30) days' prior written notice to the Authority and the Indemnitees before any material alteration, cancellation, non-renewal or expiration of the coverage to the insurance it obtains pursuant to this **Paragraph 13.1** and **Appendix B**.

13.1.4 In no event shall any approval or lack of approval of insurance or receipt or lack of receipt by the Authority of certified copies or certificates of policies required under this **Paragraph 13.1** and **Appendix B** or failure to demand receipt of such certified copies or certificates prior to the Construction Manager commencing the Work be construed as a waiver by the Authority or any of the Indemnitees of the Construction Manager's obligations to obtain insurance pursuant to this **Paragraph 13.1** and **Appendix B**. The obligation to procure and maintain any insurance required by this **Paragraph 13.1** and **Appendix B** is a separate responsibility of the Construction Manager and independent of the duty to furnish a certified copy or certificate of such insurance policies.

13.1.5 [Reserved]

13.1.6 Thirty days (30) days prior to the expiration or non renewal of any insurance required by this **Paragraph 13.1** and **Appendix B**, the Construction Manager shall supply the Authority with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required in this **Paragraph 13.1**. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Construction Manager shall also furnish the Authority with a certified copy of the renewal or replacement policy unless the Authority provides the Construction Manager with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Authority and written by carriers acceptable to the Authority.

13.1.7 Any aggregate limit under the Construction Manager's Commercial General Liability Policy and Umbrella/Excess Liability Policy shall apply to this Project separately and shall not require exhaustion of any policies providing Construction Manager coverage as an additional insured.

13.1.8 The Construction Manager shall cause each Subcontractor to (1) procure insurance reasonably satisfactory to the Authority and in accordance with the Contract Documents including **Appendix B**, unless otherwise approved in writing by the Authority, and (2) name the Construction Manager, Authority and the Indemnitees as additional insureds under the Subcontractor's Commercial General Liability Policy. The additional insured endorsement included on the Subcontractor's Commercial General Liability Policy shall state that coverage is afforded the additional insured with respect to claims arising out of ongoing and completed operations performed by or on behalf of the Subcontractor. If the additional insureds have other insurance which is applicable to the Project, such other insurance shall be, for the purposes hereof, on an excess or contingent basis. The amount of the insurer's liability under Subcontractor's insurance policy shall not be reduced by the existence of such other insurance.

13.1.9 [Reserved]

13.1.10 [Reserved]

13.1.11 [Reserved]

13.2 AUTHORITY'S LIABILITY INSURANCE

13.2.1 The Authority shall be responsible for purchasing and maintaining the Authority's liability insurance in an amount to be determined by the Authority in its sole discretion.

13.2.2 [Reserved]

13.2.3 Any deductibles required to be paid for claims made by the Construction Manager or Subcontractors against the Authority's liability insurance shall be paid by the claiming Construction Manager or claiming Subcontractor. Construction Manager's payments of the Authority's deductible for claims against the Authority's Liability insurance may be funded from the Construction Manager's Contingency if approved by the Authority.

13.3 PROPERTY INSURANCE

13.3.1 Before any portion of the Construction Phase Services is commenced, or in the sole discretion of the Authority before any orders for long lead-time items are placed, the Authority shall purchase and maintain property insurance and/or builder's risk insurance in an amount to be determined by the Authority for the Work at the Project Site or portions thereof and materials stored off the Project Site or being shipped to the Project Site.

13.3.2 [Reserved]

13.3.3 [Reserved]

13.3.4 If the Construction Manager requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Authority shall, if possible, include such insurance, and the cost thereof shall be charged to the Construction Manager by appropriate Contract Revision.

13.3.5 [Reserved]

13.3.6 [Reserved]

13.3.7 Waivers of Subrogation. The Authority, Architect, and Construction Manager waive all rights of subrogation and claims of any sort or kind against each other and any of their respective Subconsultants, Subcontractors, Suppliers, Sub-Subcontractors of all tiers, agents, and employees, whether directly or indirectly through any means through their Subconsultants, Subcontractors, Sub-Subcontractors of all tiers, agents, and employees, for loss or damages caused by fire or other named perils to the extent covered by property insurance obtained pursuant to this **Paragraph 13.3** or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Authority as fiduciary. The Contract Documents hereby require of the Authority, Architect, Construction Manager, and Trade Contractors, if any, and their Subconsultants, Subcontractors, Sub-Subcontractors of all tiers, agents, and employees of any of them, by appropriate written agreement, to include similar waivers of subrogation each in favor of other parties enumerated herein. All insurance policies required in the Contract Documents shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a Person even though that Person would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The Architect and Construction Manager shall provide to the Authority, prior to the commencement of the Work, evidence that all of the insurance policies required herein contained an appropriate endorsements as provided in this **Subparagraph 13.3.7**.

13.3.8 A loss insured under the Authority's property insurance shall be adjusted by the Authority and made payable to the Authority for the benefit of the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of **Subparagraph 13.3.10** hereof. Any costs, including attorneys' fees, involved in adjusting the loss shall be reimbursed to the Authority if not covered by the property insurance. The Construction Manager shall pay Subcontractors their just shares of insurance

proceeds received by the Construction Manager, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-Subcontractors in similar manner.

13.3.9 [Reserved]

13.3.10 [Reserved]

13.3.11 Partial occupancy or use in accordance with **Paragraph 11.9** hereof shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Authority and the Construction Manager shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of reduction of insurance.

13.3.12 Any deductibles required to be paid for claims made by the Construction Manager or Subcontractors against Authority's Property and/or Builder's Risk insurance shall be paid by the claiming Construction Manager or claiming Subcontractor. Construction Manager's payments of the Authority's deductible for Property/Builder's Risk claims may be funded from the Construction Contingency if approved by the Authority.

13.5 PERFORMANCE BOND AND PAYMENT BOND

13.5.1 Prior to the commencement of the Work, the Construction Manager shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the Act and the State of Minnesota, in a form and substance satisfactory to the Authority and the Team, and complying with the following specific requirements:

- .1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Authority, in its sole discretion;
- .2 Bonds shall be executed by a responsible surety licensed and authorized to do business in the State of Minnesota, with a Best's Key Rating Guide's rating of no less than A:X and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer;
- .3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the GMP and the Performance Bond shall guarantee Contractor will satisfactorily perform each and every part of the Construction Services Agreement, including all guarantees and warranties required ;
- .4 The Construction Manager shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his/her power of attorney indicating the monetary limit of such power;
- .5 Late completion shall be considered a failure of performance and damages caused by late completion shall be covered by Construction Manager's performance bond; and
- .6 Every Bond under this **Subparagraph 13.5.1** must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
 - .1 Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents which, singularly or in the aggregate, does not exceed One Hundred Fifty Percent (150%) of the GMP. Except as to increases in the GMP in excess of the percentage set for the above in this Subparagraph 13.5.1.6(i), any other addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of the Authority or the Construction Manager to each other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.
 - .2 Surety further agrees that in event of any default by the Authority in the performance of the Authority's obligations to the Construction Manager under the Construction Services Agreement, the Construction Manager or Surety shall cause written notice of such default, specifying said default in detail, to be given to the Authority, and the Authority shall have thirty (30) days after the receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Authority.
 - .3 Surety agrees that it is obligated under the bonds to the Authority and to any successor, grantee or assignee of the Authority.
 - .4 The costs of all bonds required under this **Paragraph 13.5** shall be a Cost of the Work.

- .5 In any Claim involving the surety and the Construction Manager, the surety shall be bound by and agrees to be a party to the dispute resolution provisions in **Article 6** of these General Conditions, including arbitration.

13.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Construction Services Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

13.5.3 The Construction Manager shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, the waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material required by the surety. The Authority shall be notified by the Construction Manager, in writing, of all significant communications with the surety regarding the Project. The Authority may inform surety of the progress of the Work and obtain consents as necessary to protect the Authority's rights, interest, privileges and benefits under pursuant to any bond issued in connection with the Work.

13.5.4 Construction Manager shall advise the Authority of the commission the Construction Manager will have pay to procure the bonds required by **Paragraph 13.5**, and if Authority considers the commission unreasonable, the Authority shall have the right to use its broker to procure the required bonds for the Construction Manager.

13.6 GENERAL REQUIREMENTS

13.6.1 All insurance coverages required under this **Article 13** shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "X" in the Best's Key Rating Guide, latest edition in effect as of the date of the respective contracts contemplated hereunder, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

13.6.2 If the Authority or any Indemnitee is damaged by the failure of any other party to purchase or maintain insurance required under this **Article 13**, then the party required to obtain or maintain, or to cause to be obtained or maintained, the insurance shall bear all damages and costs, including attorneys' fees and court and settlement expenses, attributable thereto.

13.6.3 [Reserved]

13.6.4 By requiring insurance, the Authority does not represent that coverage and limits will necessarily be adequate to protect the Construction Manager's or Architect's interests. The types and limits of insurance procured by the Construction Manager are in the control of the Construction Manager, and the Construction Manager's failure, if any, not to obtain adequate or appropriate insurance to insure shall not serve to reduce or limit Construction Manager's contractual insurance obligations including its contractual obligation to indemnify and hold harmless the Authority or the Indemnitees.

13.6.5 If any insurance required herein is to be issued or renewed on a claim-made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the Project and will state that in the event of cancellation or nonrenewal, the discovery period for insurance claims (tail coverage) will be at least sixty (60) months.

13.6.6 All policies, except for the Professional Liability Policy, shall be endorsed to provide a waiver of subrogation in favor of the Authority and Indemnitees.

ARTICLE 14 UNCOVERING AND CORRECTION OF WORK

14.1 UNCOVERING OF WORK

14.1.1 If a portion of the Work is covered contrary to the Architect's or Authority's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, the Authority, or any Governmental Authority, be uncovered for their observation, and be replaced at the Construction Manager's expense without change in the Contract Time or the GMP. If prior to the date of Substantial Completion, the Construction Manager, a Subcontractor, Supplier, or anyone for whom either is responsible uses or damages any portion of the Work, including mechanical, electrical, plumbing, or other building systems, machinery, equipment, the Construction Manager shall cause such item to be restored to "like new" condition at no expense to the Authority.

14.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect or Authority may request to see such Work and it shall be uncovered by the Construction Manager. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Contract Revision, be charged to the Authority. If such Work is not in accordance with the Contract Documents, the Construction Manager shall pay such costs.

14.2 CORRECTION OF WORK

14.2.1 The Construction Manager shall promptly correct Work rejected by the Architect or the Authority for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated,

installed or completed. The Construction Manager shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's or a Consultant's services and expenses made necessary thereby and such costs shall not be considered a Cost of the Work. If prior to the date of Substantial Completion, the Construction Manager, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, or other building systems, machinery, or equipment, the Construction Manager shall cause such item to be restored to "like new" condition.

14.2.2 If, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under **Subparagraph 11.9.1** hereof, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the Authority to do so unless the Authority has previously given the Construction Manager a written acceptance of such condition. This period of two (2) years shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this **Subparagraph 14.2.2** shall survive Final Completion and acceptance of the Work under the Construction Services Agreement and termination of the Construction Services Agreement. The Authority shall provide such notice promptly after discovery of the improper conditions.

14.2.3 The Construction Manager shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Construction Manager nor accepted by the Authority.

14.2.4 If the Construction Manager fails to correct nonconforming Work within a reasonable time, the Authority may correct it in accordance with **Subparagraph 15.4.4** hereof. If the Construction Manager does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Authority, the Authority may remove it and store the salvageable materials or equipment at the Construction Manager's expense. If the Construction Manager does not pay costs of such removal and storage within ten (10) days after written notice, the Authority may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Construction Manager, including compensation for the Architect's and the Consultant's services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the Construction Manager should have borne, the GMP shall be reduced by the deficiency. If payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Authority.

14.2.5 The Construction Manager shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Authority or Trade Contractors caused by the Construction Manager's correction or removal of Work or Trade Contractor Work or Vendor Work which is not in accordance with the requirements of the Contract Documents.

14.2.6 The Architect shall promptly give notice to the Authority of any defective or nonconforming Work of the Construction Manager or defective or nonconforming Design Services of the Architect when such defective or nonconforming Work or Design Services are discovered or observed by the Architect, Architect's employees, or Architect's Subconsultants. The Architect shall be responsible to promptly make corrections in the Architect's Design Services when the Architect's Design Services are found to contain errors or omissions by the Architect, Architect's employees, or Architect's Subconsultants. Costs associated with corrections in the Architect's Design Services, including damages or corrections involving the Work, resulting from errors or omissions in the Design Services of the Architect, its employees, or Subconsultants, shall be borne by the Architect.

14.2.7 Nothing contained in this **Paragraph 14.2** shall be construed to establish a period of limitation with respect to other obligations that the Construction Manager or Architect might have under the Contract Documents. Establishment of the time period of two (2) years as described in **Subparagraph 14.2.2** hereof relates only to the specific obligation of the Construction Manager or Architect to correct its respective Work or Design Services, and has no relationship to the time within which the obligation of the Construction Manager or Architect to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's or Architect's liability with respect to the Construction Manager's or Architect's obligations other than specifically to correct their respective Work or Design Services.

14.3 ACCEPTANCE OF NONCONFORMING WORK

14.3.1 If the Authority prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Authority may do so instead of requiring its removal and correction, in which case the GMP or Costs of the Work will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 15 **MISCELLANEOUS PROVISIONS**

15.1 GOVERNING LAW

15.1.1 The Construction Services Agreement shall be governed by the law of the State of Minnesota, without giving any effect to conflicts of law provisions.

15.1.2 Historical lack of enforcement of any Applicable Laws shall not constitute a waiver of the Construction Manager's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Construction Manager has received written consent for the waiver of such compliance from the Authority and the Governmental Authority responsible for the enforcement of Applicable Laws.

15.2 SUCCESSORS AND ASSIGNS

15.2.1 The Authority, Architect and Construction Manager respectively bind themselves, their partners, successors, assigns, and legal representatives to the other parties hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. The Architect and the Construction Manager may not assign their rights or obligations under the Contract Documents. The Authority may assign its rights and obligations under the Construction Services Agreement, and the Construction Manager agrees to complete the Work according to such assignment upon appropriate provision for payment of the balance of the payments due the Construction Manager. The Construction Manager acknowledges and agrees that the Team is a third party beneficiary under the Construction Services Agreement. Any entity which shall succeed to the rights of the Authority shall be entitled to enforce its rights under the Construction Services Agreement. If the Construction Manager makes an assignment with the consent of the Authority, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Construction Services Agreement.

15.3 WRITTEN NOTICE

15.3.1 Written notice shall be deemed to have been duly served if delivered in person or sent by registered or certified mail to the individuals at the business address set forth on **Appendix E** hereof, or to any other address subsequently identified in writing by any party hereto.

15.4 RIGHTS AND REMEDIES

15.4.1 Except as expressly provided herein, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law or equity.

15.4.2 No action or failure to act by the Authority, Architect, or Construction Manager shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

15.4.3 If the Construction Manager fails to carry out or correct any Work that is not in accordance with the requirements of the Contract Documents, the Authority, by written order, may order the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Authority to stop the Work shall not give rise to a duty on the part of the Authority to exercise this right for the benefit of the Construction Manager or any other Person, except to the extent required by **Subparagraph 8.1.3** hereof. This right shall be in addition to the rights under **Paragraph 14.2** and **Paragraph 16.3** hereof.

15.4.4 If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Authority to commence and continue correction of such default or neglect with diligence and promptness, the Authority may, without prejudice to other remedies the Authority may have, commence and continue to carry out the Work. In such case an appropriate Contract Revision shall be issued deducting from payments then or thereafter due the Construction Manager the cost of correcting such deficiencies, including compensation for any additional services and expenses made necessary by such default, neglect, or failure. The right of the Authority to stop the Work pursuant to this **Subparagraph 15.4.4** shall not give rise to any duty on the part of the Authority to exercise this right for the benefit of the Construction Manager or any other Person.

15.5 TESTS AND INSPECTIONS

15.5.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by Applicable Laws shall be made and paid for by the Construction Manager at an appropriate time. Unless otherwise provided, the Construction Manager shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity designated by the Authority, or with the appropriate Governmental Authorities, and if such tests, inspections, and approvals are not included in the Contract Documents, the Authority shall bear all related costs of tests, inspections, and approvals. The Construction Manager shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Authority shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded.

15.5.2 If the Architect, Authority, or Governmental Authorities determine what portions of the Work require additional testing, inspection, or approval not included under **Subparagraph 15.5.1** hereof, the Architect will, upon written authorization from the Authority, instruct the Construction Manager to make arrangements for such additional testing, inspection, or approval by an entity designated by the Authority, and the Construction Manager shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures. The Authority shall bear such costs except as provided in **Subparagraph 15.5.3** hereof.

15.5.3 If such procedures for testing, inspection, or approval under **Subparagraphs 15.5.1** and **15.5.2** hereof reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Construction Manager shall bear all costs made necessary by such failure including those of repairing or replacing the affected Work and compensation for the Architect's services and expenses. The Construction Manager also agrees that the cost of testing services required for the convenience of the

Construction Manager in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Construction Manager.

15.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager and promptly delivered to the Architect.

15.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

15.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

15.6 GENERAL PROVISIONS

15.6.1 [Reserved]

15.6.2 Whenever possible, each provision of the Contract Documents, the Construction Services Agreement, and the Design Services Agreement shall be interpreted in a manner as to be effective and valid under Applicable Laws. If, however, any provision of the Contract Documents, or portion thereof, is prohibited by law or found invalid under any law, any such provision or portion thereof shall be ineffective, without in any manner invalidation or affecting the remaining provisions of the Contract Documents, the Construction Services Agreement and the Design Services Agreement or valid portions of such provision, which are hereby deemed severable.

15.6.3 Each Party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

15.6.4 Any specific requirement in the Contract Documents or the Construction Services Agreement that the responsibilities or obligations of the Construction Manager also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Construction Manager's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable Subcontract.

15.6.5 [Reserved]

15.6.6 Attorneys' Fees and Costs. If any legal action, litigation or other proceeding, including arbitration, is brought for the enforcement of the Construction Services Agreement, the Design Services Agreement, or the Contract Documents and/or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of the Construction Services Agreement, the Design Services Agreement or the Contract Documents, the prevailing Party shall be entitled to recover, in addition to all other amounts awarded, reasonable attorneys' fees all reasonable costs and fees associated with paralegal, experts, consultants, or others engaged for the purposes of the litigation or proceeding, in addition to court costs, the expenses of arbitration, and other reasonable costs bringing or defending the action, and, in addition, any other relief of which it may be entitled.

ARTICLE 16

TERMINATION OR SUSPENSION OF THE CONTRACT

16.1 TERMINATION BY THE CONSTRUCTION MANAGER

16.1.1 The Construction Manager may terminate the Construction Services Agreement if the Work is stopped through no act or omission of the Construction Manager, a Subcontractor, Sub-Subcontractor, or any other persons performing portions of the Work under contract with them, for any of the following reasons:

- .1** issuance of an Order of a court or other Governmental Authority that shuts the Project down completely for an uninterrupted period of one hundred eighty (180) days; or
- .2** an act of a Government Authority, such as a declaration of national emergency, making material necessary to complete activities on the critical path of the Construction Schedule unavailable for an uninterrupted period of one hundred eighty (180) days;
- .3** if repeated suspensions, delays, or interruptions of the Work by the Authority cause critical path delays to the Construction Schedule, which constitute in the aggregate more than one hundred percent (100%) of the total number of days shown in the initial Construction Schedule to be scheduled for completion, or one hundred eighty (180) days of critical path delay to the Construction Schedule in any 365-day period, whichever is less; or
- .4** if all the Work on the Project is completely stopped for a period of one hundred eighty (180) days through no act or omission of the Construction Manager or a Subcontractor or any Person performing portions of the Work under contract with them, because the Authority has persistently failed to fulfill the Authority's obligations under the Contract Documents with respect to matters critical to the progress of the Work.

16.1.2 If one of the above reasons exists, the Construction Manager may provide the Authority and Architect a thirty (30) day written notice to cure, and if the Authority does not diligently begin and continue to cure the cause of the termination within said thirty (30) days, the Construction Manager may serve a second ten (10) day termination notice to the Authority, and if the cause of the termination remains uncured, the Construction Manager may terminate the Construction Services Agreement and the Construction Manager's sole and exclusive remedy shall be payment for the allowable Costs of the Work properly and timely performed prior to the effective date of termination and for items properly and timely fabricated off the Project Site, delivered, and stored in accordance with the Authority's instructions, and proven costs of termination for the Construction Manager such as, for example, restocking charges, non-cancelable material purchase orders, and that portion of the Construction Manager's Fee attributable to the Work actually executed. The Construction Manager hereby waives and releases all other Claims for payment and damages, including anticipated Fee, profits or lost overhead for portions of the unperformed Work. The Authority shall be credited for:

- .1 payments previously made to the Construction Manager for the terminated portion of the Work;
- .2 Claims that the Authority has against the Construction Manager under the Construction Services Agreement; and
- .3 the value of the materials, supplies, equipment, or other items that are to be disposed of by the Construction Manager that are part of the GMP.

16.1.3 If the Authority has not issued a Certificate for Payment, or the Authority has not made payment on a Certificate of Payment, the Construction Manager, and the Construction Manager is entitled to stop the Work as set forth in **Subparagraph 11.7.1**, and if the Authority's failure to issue a Certificate for Payment or failure to make a payment on a Certificate of Payment continues uncured for one hundred twenty (120) days, the Construction Manager may terminate the Construction Services Agreement upon ten (10) days additional written notice, and the Construction Manager's sole remedy shall be as set forth in **Subparagraph 16.1.2**.

16.2 TERMINATION BY THE AUTHORITY FOR CAUSE

16.2.1 The Authority may terminate the Construction Services Agreement if the Construction Manager:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Construction Manager and the Subcontractors;
- .3 repeatedly disregards Applicable Laws or Orders of a Public Authority;
- .4 otherwise is in substantial breach of a provision of the Contract Documents;
- .5 becomes insolvent, files a Petition in Bankruptcy, or is adjudicated bankrupt, makes a general assignment to the benefit of its creditors, or cannot pay its debts as they generally become due; or
- .6 suspends its business operations or otherwise fails to operate its business in the ordinary course.

16.2.2 When any of the above reasons exist, the Authority may, without prejudice to any other rights or remedies of the Authority and after giving the Construction Manager and the Construction Manager's surety, if any, seven days' written notice, terminate employment of the Construction Manager and may, subject to any prior rights of the surety:

- .1 Exclude the Construction Manager from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager;
- .2 Accept assignment of Subcontracts pursuant to **Paragraph 7.4** hereof; and
- .3 Finish the Work by whatever reasonable method the Authority may deem expedient; **provided, however**, in the event such matters are cured by the Construction Manager within said seven (7) days to the satisfaction of the Authority, such termination notice shall, upon written notice from Authority, be rescinded.

Upon written request of the Construction Manager, the Authority shall furnish to the Construction Manager an accounting of the costs incurred by the Authority in finishing the Work after a termination for cause.

16.2.3 When the Authority terminates the Construction Services Agreement for one of the reasons stated in **Subparagraph 16.2.1** hereof, the Construction Manager shall not be entitled to receive further payment until the Work is finished.

16.2.4 If the unpaid balance of the GMP exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages and costs incurred by the Authority in finishing the Work and not expressly waived, such excess shall be paid to the Construction Manager to the extent the Construction Manager has incurred unpaid Costs of the Work. If such costs and damages of the Authority to finish the Work exceed the unpaid balance of the GMP, the Construction Manager shall pay the difference to the Authority. The obligation to pay and the amount to be paid to the Construction Manager or Authority, as the case may be, shall survive termination of the Construction Services Agreement.

16.2.5 If, after a termination for cause, it is determined that the Construction Manager was not in breach or default, the rights and obligations of the parties will be the same as if the termination had been issued for convenience pursuant to **Paragraph 16.4** hereof, and the Construction Manager's sole and exclusive remedy from the Authority shall then be any payment required by that **Paragraph 16.4**.

16.3 SUSPENSION BY THE AUTHORITY FOR CONVENIENCE

16.3.1 The Authority may, without cause, order the Construction Manager in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Authority may determine.

16.3.2 The GMP and Contract Time shall be adjusted for increases in allowable Cost of the Work and time caused by suspension, delay, or interruption as described in **Subparagraph 16.3.1** hereof. Adjustment of the GMP shall include Fee, which shall be limited to ___% of the allowable Costs of the Work associated with the suspension, delay, or interruption. Furthermore, no adjustment in the GMP or Contract Time shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed, or interrupted by any other cause for which the Construction Manager is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Construction Services Agreement; or
- .3 the suspension, delay, or interruption does not delay, suspend or interrupt activities then currently on the critical of the Construction Schedule; or
- .4 the Construction Manager fails to provide a notice of its Claim for adjustment to the GMP and Contract Time as required by **Subparagraph 6.2.3** hereof.

16.4 TERMINATION BY THE AUTHORITY FOR CONVENIENCE

16.4.1 The Authority may, in its sole discretion and at any time, terminate the Construction Services Agreement for the Authority's convenience and without cause.

16.4.2 Upon receipt of written notice from the Authority of such termination for the Authority's convenience, the Construction Manager shall:

- .1 cease operations as directed by the Authority in the notice;
- .2 take actions necessary, or that the Authority may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders.

16.4.3 In case of such termination for the Authority's convenience, the Construction Manager shall recover, as its sole remedy, payment for the allowable Costs of the Work properly performed prior to the effective date of termination and for items properly and timely fabricated off the Project Site, delivered, and stored in accordance with the Authority's instructions, and proven costs of termination for the Construction Manager such as, for example, restocking charges, non-cancelable material purchase orders, and that portion of the Construction Manager's Fee attributable to the Work actually executed. The Construction Manager hereby waives and releases all other Claims for payment and damages, including anticipated Fee, profits or lost overhead for portions of the unperformed Work. The Authority shall be credited for:

- .1 payments previously made to the Construction Manager for the terminated portion of the Work;
- .2 Claims that the Authority has against the Construction Manager under the Construction Services Agreement; and
- .3 the value of the materials, supplies, equipment, or other items that are to be disposed of by the Construction Manager that are part of the GMP.

16.5 [Reserved]

16.5.1 [Reserved]

**GENERAL CONDITIONS OF THE CONSTRUCTION SERVICES AGREEMENT
APPENDIX A**

DEFINITIONS

Defined terms as used in the Contract Documents shall have the following meanings:

“**Act**” shall mean 2012 Minnesota Laws, Chapter 299, as enacted or hereafter amended or supplemented, and including any successor law, providing for, among other things, the construction, financing, operation, and long-term use of a multi-purpose stadium and related infrastructure as a venue for the National football League and a broad range of other civic, community, athletic, educational, cultural, and commercial activities in the City of Minneapolis, Minnesota.

“**ADA**” shall mean Title III of the Americans with Disabilities Act and the regulations and definitive guidelines issued thereunder by the United States Department of Justice concerning accessibility of places and public accommodation and commercial facilities, as well as any other Applicable Laws governing the same or similar subject matter.

“**Addenda**” shall mean shall written or graphic instruments issued prior to the execution of the Construction Services Agreement which modify or interpret the Contract Documents, including the Drawings and Specifications, by additions, deletions, clarifications or corrections.

“**Additional Insured Parties**” shall have the meaning set forth in **Subparagraph 9.1.15** of the Design Services Agreement.

“**Additional Services**” shall mean services beyond the scope of Design Services that are authorized or approved in writing by Contract Revision by the Authority as described in detail in **Paragraph 2.2** of the Design Services Agreement.

“**Additional Services Authorization**” shall mean the Authority’s written approval of an Additional Service proposed by the Architect, as described in **Paragraph 2.2** of the Design Services Agreement.

“**Adjacent Property**” shall mean all land adjoining and surrounding the Stadium Site on which will be located any public streets, sidewalks, plazas, or bridges and any public or private parking facilities or other accoutrements to be developed by Authority or other parties in connection with the Project.

“**Affiliate**” or “**Affiliated Entity**” of a specified Person shall mean any entity, corporation, partnership, limited liability company, sole proprietorship or other Person that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with the Person specified. For purposes of the Design Services Agreement and Contract Documents the terms “controls,” “controlled by,” or “under common control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

“**Agreement**” shall mean Construction Services Agreement (in the case of the Construction Manager) or Design Services Agreement (in the case of the Architect).

“**Alternate**” shall mean a proposed possible change in the Work as described in the Contract Documents.

“**Applicable Laws**” shall mean any and all laws (including all statutory enactments and common law), constitutions, treaties, statutes, codes, ordinances, charters, resolutions, Orders, rules, regulations, guidelines, standards, Governmental Approvals, authorizations, or other directives or requirements of any Governmental Authority enacted, adopted, promulgated, entered, implemented, ordered or issued and in force or deemed applicable by or under the authority of any Governmental Authority having jurisdiction over a person (or the property of such person), including the Act and Environmental Laws, applicable to the State, County, City, Authority, Team, Architect, Construction Manager, and/or other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project. Notwithstanding the foregoing, Applicable Laws shall expressly include all requirements, regulations and administrative orders of the City, County and State, as same may be modified by variances and waivers issued in accordance with Applicable Laws.

“**Application for Payment**” shall mean the Construction Manager’s or Architect’s monthly requisition for payment which shall be submitted on the form attached to or identified in the Construction Services Agreement (in the case of the Construction Manager) or Design Services Agreement (in the case of the Architect).

“**Architect**” shall mean HKS, Inc., its principals, officers, employees, agents, and the permitted successors and assigns, or such other firm of licensed architects and/or engineers as may be designated by Authority from time to time. For the purpose of the Design Services Agreement and the Contract Documents, “Architect” also includes the Architect’s Subconsultants, unless otherwise specified.

“**Architect’s Subconsultant Agreement**” shall mean the written agreement between the Architect and any of the Architect’s Subconsultants covering performance by the Architect’s Subconsultant of a portion of the Architect’s Design Services under the Design Services Agreement.

“As-Built Drawings” shall mean CAD generated red-lined Construction Documents showing the Work as constructed, prepared by the Construction Manager and indicating actual locations of utilities and all changes and alterations made to the Work during construction. CAD files will be provided by the Construction Manager in a format acceptable to the Authority.

“Authority” shall mean the Minnesota Sports Facilities Authority, a public body and political subdivision of the State of Minnesota, and its successors, assigns and designees.

“Authority-Furnished Items” shall mean materials and other items selected and purchased by the Authority, outside of the Construction Services Agreement for installation in the Project by a Trade Contractor.

“Authorized Representative” shall mean an individual, designated in writing by each party, who shall be authorized to bind that party under the terms of the Contract Documents.

“Basic Services” or “Designated Services” shall mean Construction Manager’s Work (in the case of the Construction Manager) or the Architect’s Design Services (in the case of the Architect).

“Bid Analysis” shall mean a comparison of all of the bids received for a particular scope of Work and an analysis of the costs and benefits of accepting the bid or proposal of any Subcontractor or Supplier being recommended by the Construction Manager, including an analysis of the price and schedule of Subcontractor’s or Supplier’s bid or proposal and its capabilities and history of complete, proper, and timely performance on other projects.

“Bid Documents” shall mean the procedural documents and Bid Packages submitted to prospective Subcontractors in connection with the competitive bidding process.

“Bid Package” shall mean the collection of pertinent portions of the Construction Documents into a package suitable for bidding by prospective Subcontractors working in a specific trade.

“Bidder’s List” shall mean a list of prospective Subcontractors or if approved by the Authority, in consultation with the Architect, prepared and pre-qualified by the Construction Manager.

“Building Information Modeling” or “BIM” shall have the meaning set forth in **Exhibit 1** to the Design Services Agreement.

“Bulletin” shall mean written or graphic instruments issued by the Architect after the execution of the Construction Services Agreement which request a proposal from the Construction Manager that, if approved by the Authority, will cause the execution of a Contract Revision to modify the Contract Documents.

“Business Day” or “Work Day” shall mean Monday, Tuesday, Wednesday, Thursday and Friday, excluding any day that banks are required to close in the State of Minnesota, and excluding Saturday and Sunday.

“Certificate for Payment” shall mean a written certificate executed by the Architect indicating the amount that the Construction Manager is entitled to be paid in connection with each Construction Manager Application for Payment.

“Change” shall mean an agreed-upon modification to the Work which affects the GMP and/or the Contract Time.

“Change Order” shall mean a written order signed by the Construction Manager, authorizing a change in a Subcontractor’s scope of Work.

“City” shall mean the City of Minneapolis, Minnesota.

“Claim” shall have the meaning set forth in **Subparagraph 6.2.1** of these General Conditions attached as **Exhibit 6** to the Construction Services Agreement.

“Conceptual Design Documents” shall mean the preliminary project work plan, programming report, and pre-design document, concept sketches and renderings illustrating the scale and relationship of the Project components.

“Conceptual Design Phase” shall mean the Phase during which the Conceptual Design Documents are being prepared by the Architect.

“Confidential Information” shall mean all information (whether or not specifically labeled or identified as confidential), in any form or medium, which is disclosed to or learned by the Architect and/or the Architect’s Subconsultants, the Construction Manager and/or the Construction Manager’s Subcontractors, Trade Contractors or any other member of the Project Team in the performance of the Work required in the Contract Documents, or acquired directly or indirectly such as in the course of discussion or investigations by the Architect and the Architect’s Subconsultants relating to the Project, and which relates to the Authority or Team’s business, finances, marketing strategy, products, services, research or development, suppliers, clients, or customers, or which relates to similar

information of a third party who has entrusted such information to the Authority including, without limitation, any specialized know-how, technical or non-technical data, formula, pattern, plan, strategy, compilation, program, device, method, technique, drawing, process, financial or business information, models, novel analysis, work papers, studies or other documents that contain, reflect, or are based on such information.

“Construction Change Directive” shall have the meaning ascribed in **Paragraph 9.3** of the General Conditions.

“Construction Cost” shall mean the total cost or, to the extent that the Project is not completed, the estimated cost to the Authority of all elements of the Work as designed or specified in the Construction Documents.

“Construction Documents” shall mean those deliverables to be provided by the Architect, which are necessary to complete the Work, including, but not limited to, the Drawings, Specifications, Addenda, Bulletins and the Project Manual.

“Construction Documents Phase” shall mean that Phase during which the Construction Documents are being prepared by the Architect.

“Construction Management Plan” shall mean a comprehensive document prepared by the Construction Manager, for review and approval by the Authority, setting forth in detail the Construction Manager’s planning, administrative and management techniques to complete the Construction Manager’s Work. The Construction Management Plan shall include the certified GMP, detailed Estimates of Construction Costs, the Construction Schedule, certified completion date, the Project Manual, the Schedule of Values and other information requested by the Authority.

“Construction Manager” shall mean the legal entity that has entered into the Construction Services Agreement with the Authority for completion of the Work on the Project.

“Construction Manager Contingency” or **“Contingency”** shall have the meaning set forth in **Exhibit 3** to the Construction Services Agreement.

“Construction Phase” shall mean that Phase of the Project which shall commence after the Authority provides the Construction Manager or Trade Contractor with written Notice to Proceed with the Construction Phase.

“Construction Phase Services” shall mean the Basic Services described in **Article 2** and **Paragraph 2.2** of **Exhibit 1** of the Construction Services Agreement.

“Construction Schedule” shall mean the schedule prepared by the Construction Manager in CPM format and approved by the **SDC Group** and with the written approval of the Authority, and all adjustments thereto approved by the Authority, that describes the sequence and timing of the Work on the Project.

“Construction Services Agreement” shall mean the written agreement between the Authority and the Construction Manager.

“Consultant” shall mean a Person engaged by the Authority or Team to perform a portion of the professional services associated with the Project under direct contract with the Authority or Team.

“Consultant’s Services” shall mean the complete professional services to be provided by the Consultant and as described in a Consulting Services Agreement between the Authority or the Team and the Consultant, and includes all labor, materials, equipment and services to be provided by the Consultant to fulfill its obligations under the Contract Documents.

“Consulting Services Agreement” shall mean a contract between the Authority or the Team and a Consultant for the performance of professional services associated with the Project.

“Contamination” means the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Stadium Site, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances or which otherwise constitutes a violation of Environmental Laws.

“Contract Documents” shall mean the complete body of contractual documents that define the Work of the Construction Manager under the Construction Services Agreement, the Work of a Trade Contractor under a Trade Contractor Agreement, or the Work of a Vendor under a Vendor Agreement and include, all exhibits attached to such agreements, the General Conditions to the Construction Services Agreement, Drawings, Specifications, Addenda, Bulletins, the Project Manual, the GMP, the Construction Schedule prepared and approved in accordance with the Construction Services Agreement and other required Submittals.

“Contract Request Form” shall mean a form on which changes to the Work or Contract Time are requested or on which approvals to use certain Subcontractors are requested by the Construction Manager.

“Contract Revision” shall mean a written instrument prepared by the Authority and signed by the Authority and Construction Manager (in the case of the Construction Services Agreement), or signed by the Authority and Architect (in the case of the Design Services Agreement), stating their agreement upon a change in the Construction Manager’s Work; the amount of the adjustment in the GMP, if any; the extent of the adjustment in the Contract Time, if any, and the updated Schedule of Values in the case of the Construction Services Agreement, or stating their agreement upon a change in the Design Services Fee or Contract Time (in the case of the Design Services Agreement).

“Contract Time” shall be as provided in the Construction Services Agreement.

“Coordination Drawings” shall mean drawings prepared by Subcontractors detailing the Work and the coordination of Work items among the various Subcontractors.

“Cost of the Work” shall mean the amount of payment Construction Manager is eligible to receive for the proper performance of the Work as provided in **Article 8** of the Construction Services Agreement.

“Cost Control Report” shall have the meaning set forth in **Exhibit 1** to the Construction Services Agreement.

“CPM” shall mean a critical path method format to be used for the Construction Schedule.

“Critical Path” shall mean those Work activities identified on the Construction Schedule which, if delayed, will cause a corresponding Delay in the Substantial Completion Date.

“Day” shall mean a calendar day, unless otherwise specifically designated.

“Delay” shall mean any delay or interruption in the progress of the Work as anticipated on the approved Construction Schedule.

“Design Delivery Schedule” shall mean the schedule covering Design Services to be performed by the Architect and the Architect’s Consultants as set forth in **Article 4** of the Design Services Agreement, and as the same may be modified by mutual agreement of the Parties

“Design Development Documents” shall mean the Drawings, Specifications and other documents prepared by the Architect that establish and describe the size and character of the Project as to architectural, civil, structural, landscape, mechanical and electrical systems, graphics and signage, and other elements, and which include typical construction details, equipment layouts and specifications that identify major materials and systems and as more specifically described in the Design Services Agreement.

“Design Development Phase” shall mean that Phase during which the Architect prepares the Design Development Documents.

“Design Document Works” shall have the meaning set forth in **Paragraph 1.3** of the Design Services Agreement.

“Design Documents” shall mean, collectively and as applicable, the Concept Design Documents, Schematic Design Documents, the Design Development Documents and the Construction Documents prepared by the Architect.

“Design Phases” shall mean those Phases which are preparatory to the physical construction of the Project during which the Schematic Design Documents, Design Development Documents and Construction Documents are being prepared by the Architect.

“Design Services” shall mean the complete architectural design and engineering for the Project, and includes all labor, materials, equipment and services to be provided by the Architect to fulfill its obligations under the Design Services Agreement. The Design Services shall include all, of the labor, materials, equipment and services to be provided by the Subconsultants of any tier employed directly or indirectly by the Architect, and shall include all necessary and appropriate coordination and integration of the Consultant’s Services to allow the Construction Manager, Vendors, and Trade Contractors to complete the Work in accordance with the Contract Documents. The Design Services shall be performed in strict accordance with all provisions of the Act.

“Design Services Contract Time” shall have the meaning ascribed to such term in **Paragraph 4.1** of the Design Services Agreement.

“Design Services Fee” shall mean the total cost for the Architect to complete the Design Services in accordance with the Design Services Agreement, including, all costs, expenses, profit and overhead of the Architect, and its Subconsultants, to include all related Direct Personnel Expenses and Reimbursable Expenses.

“Design Team” shall mean Architect and its Subconsultants as set forth in the Design Services Agreement.

“Designated Services” shall mean the Architect’s Design Services provided in **Exhibit 1**, attached to the Design Services Agreement.

“Direct Personnel Expenses” shall mean all direct and indirect costs of employment including salaries, wages, insurance, customary

and/or special benefits associated with the employment of a Person by the Architect for the Design Services.

“Division” shall mean one of the divisions of a Specification as defined by the Construction Specifications Institute.

“Drawings” shall mean graphic or pictorial portions of the Design Documents prepared by Architect, Subconsultants, and Consultants, wherever located and whenever issued, which show, among other things, the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

“Early Release Bid Packages” shall mean those bid packages prepared by the Architect in connection with the Fast-Track Construction process, which are put out for bidding prior to final completion of the remainder of the Construction Documents.

“EAW” shall mean any environmental assessment worksheet required under the Applicable Laws.

“EIS” shall mean any environmental impact statement required under the Applicable Laws.

“Electronic Data” shall mean Design Documents and other Project, data transmitted in electronic format and as further defined in **Subparagraph 1.3.1** of the Design Services Agreement.

“Environmental Laws” shall mean all Applicable Laws, including any consent decrees, settlement agreements, judgments, or Orders, issued by, or entered into with, a Governmental Authority pertaining or relating to: (i) pollution or pollution control; (ii) protection of human health or the environment; (iii) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (iv) the presence of Contamination; and (v) the protection of endangered or threatened species.

“Estimated Construction Costs” shall mean the estimated cost from the Construction Manager of all elements of the Work designed or specified by Architect, Subconsultants, and Consultants. Estimated Construction Costs will not include the compensation of Architect, Subconsultants, or Consultants, the cost of the acquisition of the Stadium Site (or any development rights or zoning entitlements from adjoining properties) or the costs incurred by Authority in connection with Authority’s responsibilities under **Article 3** of the Design Services Agreement. **“Existing Stadium”** shall mean the Mall of America Field at Hubert H. Humphrey Metrodome in Minneapolis, Minnesota.

“Extraordinary Measures” shall have the meaning set forth in **Subparagraph 4.10.7** of these General Conditions attached as **Exhibit 6** of the Construction Services Agreement.

“FF&E” shall mean, collectively, furniture, furnishings, fixtures, accessories, equipment and similar items designed or specified by the Architect that comprise a portion of the Work.

“FF&E Budget” shall mean a budget covering only FF&E. The FF&E Budget is separate from the Construction Cost.

“Final Completion” shall mean that the Construction Manager has satisfactorily completed all of Work in strict conformity with the requirements of the Contract Documents, and the Work has been finally accepted by the Authority.

“Final Payment” shall mean the last payment to the Construction Manager, including retainage, in connection with the Work.

“Fixed Construction Budget” shall mean the maximum established cost for the Work. The Fixed Construction Budget shall establish the basis for determining the sum of the GMP in the Construction Services Agreement and any GMPs in Trade Contracts or Vendor Contracts, including any maximum amounts for specific line items. The Fixed Construction Budget for the Work is an amount to be determined by the Authority and Team.

“Force Majeure” shall mean an act of God, fire, tornado, hurricane, named storms, flood, earthquake, explosion, war, terrorism, embargoes, civil disturbance, unusually severe weather that is abnormal and unforeseeable for the time of year in question, or industry-wide labor strikes

“General Conditions” shall mean the General Conditions of the Construction Services Agreement.

“GMP Pricing Documents” shall mean the Design Development Documents and such other Construction Documents as may be required by the SDC Group or the Authority to establish the GMP with the Construction Manager.

“GMP Proposal” shall mean the proposed GMP for the Work prepared by the Construction Manager as part of the Construction Management Plan.

“Governmental Approvals” shall mean all waivers, franchises, variances, permits, authorizations, certificates, registrations, licenses, and Orders of and from any Governmental Authority having jurisdiction over the Project, Work, Stadium Site, Adjacent Property, Authority, Team, Consultant, Architect, Subconsultant, Construction Manager, Subcontractor, Trade Contractor, Vendor City, County,

State, and other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project or any Adjacent Property.

“Governmental Authority(ies)” shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them having jurisdiction with respect to the Project, Work, Stadium Site, Adjacent Property, Authority, Team, Consultant, Architect, Subconsultant, Construction Manager, Subcontractor, Trade Contractor, Vendor, City, County, State, and other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project or any Adjacent Property.

“Governmental Body” or **“Governmental Bodies”** shall have the meaning set forth in **Paragraph 12.10** of the Design Services Agreement.

“Green Globes” shall mean the requirements, standards and rating system developed by the Green Building Initiative for environmental design.

“Guaranteed Maximum Price” or **“GMP”** shall mean, as applicable, the absolute not-to-exceed limit for the amount of money to be paid to the Construction Manager for its Work under the Construction Services Agreement, or to a Trade Contractor or Vendor under any Trade Contract or Vendor Contract.

“Hazardous Materials” shall mean: (1) any “hazardous waste” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.) as amended, and regulations promulgated thereunder; (2) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.), as amended, and regulations promulgated thereunder; (3) any “hazardous waste” or “hazardous substance” as defined by applicable Minnesota State laws and regulations), as amended, and regulations promulgated thereunder; and (4) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning such waste, substance or material.

“Including” shall encompass the phrase “including without limitation” and be understood to indicate an example and not a limitation.

“Indemnitees” shall mean the Minnesota Sports Facilities Authority, Minnesota Vikings Football, LLC, Hammes Company Sports Development, Inc., ICON Venue Group, LLC., Architect, Lender(s), their Affiliated Parties and each of the foregoing Persons’ elected officials, appointed officials, board members, directors, officers, shareholders, affiliates, subsidiaries, parent companies, members, owners, agents, representatives, lenders, legal counsel, and employees, together with the constituent partners, members, owners, shareholders, and heirs and estates of each of the foregoing, and the City and State.

“Key Personnel” shall mean those employees of the Architect and Construction Manager, who will have primary responsibility for implementing, the Architect’s obligations under the Design Services Agreement and the Construction Manager’s Work under the Construction Services Agreement, respectively.

“LEED” or **“Leadership in Energy and Environmental Design (LEED)”** shall mean the requirements, standards and rating system developed by the U.S. Green Building Council for environmental design.

“Legal Requirements” shall mean the requirements set forth in any Applicable Laws.

“Lender” shall mean any bank, insurance company, trust, corporation, association, firm, partnership, Person, or other entity that has loaned or agreed to lend or otherwise provide funds or credit enhancement to enable the development and construction of the Project.

“Master Project Budget” means the budget to be prepared by the Authority which incorporates all of the costs associated with the Project in accordance with the Act.

“Master Project Schedule” means the schedule to be prepared by the Authority which incorporates the Construction Schedule developed by the Construction Manager and the Design Delivery Schedule developed by the Architect and all other primary activities associated with the Project

“MEP” shall mean mechanical, electrical and/or plumbing fixtures or systems.

“MGDPA” shall have the meaning set forth in **Paragraph 12.9** of the Design Services Agreement.

“Milestone Date” shall mean a date in the Construction Schedule identified for its importance in measuring progress of all or part of the Work.

“Minimum Design Standards” shall be the standards and criteria agreed to on **Exhibit 9** to the Design Services Agreement.

“Modification” shall mean a writing changing the terms of a contract signed by the parties to that contract.

“National Football League” or **“NFL”** shall mean, collectively, the Office of the National Football League Commissioner, the National Football League Commissioner, the member clubs of the National Football League, the NFL owners, and/or any other Person appointed by any of the foregoing, or any successor substitute association or entity of which the Team is a member or joint owner and which engages in professional football in a manner comparable to the National Football League.

“NFL Rules and Regulations” shall mean, collectively, the constitution and bylaws, and the rules, guidelines, regulations and requirements of the NFL, and any other rules, guidelines, directive, advisory opinions, regulations or requirements of the Office of the Commissioner of the NFL, and/or any other person appointed by the foregoing, that are generally applicable to NFL franchises, all as the same now exist or may be amended or adopted in the future.

“Notice to Proceed” shall have the meaning set forth in **Paragraph 2.3** of the Construction Services Agreement.

“Order” mean any judgment, award, decision, directive, consent decree, injunction (whether temporary, preliminary or permanent), ruling, or writ ordered adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Authority or arbitrator that is binding on any person or its property under Applicable Laws.

“Party” or **“Parties”** shall mean the Authority and/or the Construction Manager as applicable.

“Pending Change Report” shall mean a summary of the status of all pending requests for Contract Revisions and Change Orders that the Authority may generate from time to time.

“Person” shall mean: (1) an individual, sole proprietorship, corporation, limited liability company, partnership, joint venture, joint stock company, estate, trust, limited liability association, unincorporated association or other entity or organization; (2) any Federal, State, county or municipal government (or any bureau, department, agency or instrumentality thereof); and (3) any fiduciary acting in such capacity on behalf of any of the foregoing.

“Phase” as used herein, shall mean any one of the various phases, or distinct, contiguous portions of time, of the Architect’s Design Services or Construction Manager’s Work, as applicable.

“Pre-Construction Phase Services” shall mean those services described in **Article 2** of the Construction Services Agreement and in **Exhibit 1**, Paragraphs of the Construction Services Agreement **“Program”** shall mean a narrative description of the requirements desired by the Authority and Team and prepared by the Architect to be incorporated into the design of the Project, which shall form the basis for preparation by the Architect of the Design Documents for the Project.

“Project” shall mean the development, design, construction and equipping of the Stadium and the Stadium Infrastructure and any related activities in accordance with the Act.

“Project Costs” shall mean all costs authorized under the Preliminary Development Agreement or Development Agreement by and between the Authority and the Team to be incurred in the furtherance of the Project, including the costs of acquiring the Stadium Site and certain temporary relocation costs of the Team.

“Project Labor Agreement” shall mean an agreement by which labor organizations agree to terms and conditions of employment, to cooperate in resolving labor disputes, and to maintain labor peace on the Project.

“Project Manual” shall mean a written volume assembled for the Work that includes specific instructions to the Project Team setting forth the requirements, policies and procedures for performance and execution of the Design Services and Work and that contains, among other things, the General and Supplementary Conditions and Specifications of the Construction Services Agreement.

“Project Participant” shall mean a member of the Project Team.

“Project Safety Program” shall be developed by Construction Manager pursuant to the Construction Services Agreement.

“Project Site” shall mean the site where the Project is to be constructed.

“Project Team” shall mean any Person involved in the Project and under a contract with the Authority or Team, including the Construction Manager and its Subcontractors, Sub-Subcontractors, Suppliers, Vendors, the Architect and its Subconsultants of any tier, Trade Contractors of all tiers contracted directly by the Authority and Consultants contracted directly by the Authority or Team. The Authority must be presented, and asked to provide written approval of, all agreements or contracts, consistent with the terms and conditions of the Contract Documents, with any member of the Project Team before any services or Work is to be provided or performed on the Project by any such member.

“Project Website” shall mean the website managed and maintained by the Architect.

“Punchlist” shall mean a list, compiled by the Construction Manager and reviewed by the Architect at Substantial Completion, and approved by the Authority, which identifies items of Work that remain to be completed or corrected prior to Final Payment to the Construction Manager.

“Purchase Order” shall have the meaning set forth in **Paragraph 10.5** of the Construction Services Agreement.

“Record Drawings” shall mean a reproducible set of Construction Documents into which the Architect has incorporated: (1) clarifications, sketches and other modifications made by the Architect during the Construction Phase; and (2) significant changes in the Work made during construction as shown on the Construction Manager’s As-Built Drawings.

“Regulated Substance” shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “hazardous waste,” “toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “solid waste,” “industrial waste,” “residual waste,” “municipal waste,” “special handling waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “regulated substance,” “pollutant” or “contaminant” or any other substance, material or waste, regardless of its form or nature, which otherwise is regulated by Environmental Laws.

“Reimbursable Expenses” shall mean actual, out—of—pocket expenses incurred by the Architect and the Architect’s Subconsultants for the benefit of the Project.

“Reimbursable Expense Budget” shall mean the Architect’s budget for Reimbursable Expenses as set forth in the Design Services Agreement.

“Required Insurance” shall mean the insurance required of the Construction Manager pursuant to the Construction Services Agreement, including **Article 11** and **Attachment B** to this **Exhibit 6**.

“Response Action” shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Stadium Site, including the correction or abatement of any violation required pursuant to Environmental Laws or by a Governmental Authority.

“Retractable Feature” shall mean an alternative design option to a fixed-roof stadium that would provide for an operable roof or other open air options for the Stadium.

“RFI” shall mean a request for information or clarification directed by the Construction Manager and/or a Subcontractor to the Architect.

“Samples” shall mean physical examples that illustrate materials, items of workmanship, and which establish standards by which the Work will be judged.

“Schedule of Values” shall mean an allocation of the entire GMP among the various portions of the Work as required by the Authority and to be provided by the Construction Manager.

“Schematic Design Documents” means drawings prepared by the Architect that illustrate the scale and relationship of the various Project components and which also contain square footage and volume calculations for the building interior spaces, building exterior spaces, and major architectural and interior finishes.

“Schematic Design Phase” shall mean that Phase during which the Schematic Design Documents are being prepared by the Architect.

“Self-Performed Work” shall mean such Work (other than performance of General Conditions) in which a substantial portion thereof (i.e., more than 20% thereof) is performed directly by Construction Manager’s own labor forces or the labor forces of any Affiliate of Construction Manager (including any joint venture partners of Construction Manager).

“Shop Drawings” shall mean drawings, diagrams, illustrations, schedules, performance checks and other data prepared by the Construction Manager or any Subcontractor to illustrate how a specified portion of the Work will be constructed.

“Specifications” shall mean the written specifications prepared by Architect, Subconsultants and Consultants consisting of the written requirements for materials, equipment, technical requirements and construction systems, standards and workmanship for the Work, and performance of related services.

“Stadium” shall mean a multipurpose stadium suitable for NFL football and a broad range of other civic, community, athletic, educational, cultural, and commercial activities.

“Stadium Developer” shall mean, as between the Authority and the Team, which of the two parties shall be responsible for the management of the construction of the Stadium and Stadium Infrastructure.

“Stadium Infrastructure” shall mean plazas, including the Stadium Plaza, parking structures, rights of way, connectors, skyways and tunnels, and other such property, facilities, and improvements, owned by the Authority or determined by the Authority to be reasonably necessary to facilitate the use and development of the Stadium.

“Stadium Plaza” shall mean the open air portion of the Stadium Infrastructure adjacent to the Stadium.

“Stadium Site” shall mean all or portions of the current site of the Existing Stadium and adjacent areas, bounded generally by Park and Eleventh Avenues and Third and Sixth Streets in the City of Minneapolis, together with any vacated streets or other lands acquired for the development, construction and use of the Project.

“Standard Details” shall mean design details developed by the Architect and the Architect’s Subconsultants over time, and used routinely in their respective practices.

“Standard of Care” in regard to the Architect shall mean that standard of professional care, skill, diligence and quality that prevail among national design firms engaged in the planning, design, and construction administration of large scale and complex projects of similar scope, function, size, quality, complexity and detail, including the design of similar NFL stadiums in comparable urban areas throughout the United States, and further including performance in accordance with Applicable Laws and the NFL Rules and Regulations.

“Standard of Care” in regard to the Construction Manager shall mean that that standard of professional care, skill, diligence and quality that prevail among national construction management firms engaged in the planning, estimating, scheduling, construction, and construction administration of large scale and complex projects of similar scope, function, size, quality, complexity and detail, including the design of similar NFL stadiums in comparable urban areas throughout the United States, and further including performance in accordance with Applicable Laws and the NFL Rules and Regulations

“State-of-the-Art” shall have the meaning set forth in **Subparagraph 2.1.13** of the Design Services Agreement.

“Subconsultant” shall mean a Person engaged or to be engaged by the Architect to perform a portion of the Design Services. The term “Subconsultant” also includes any lower tier Sub-Subconsultant engaged by a Subconsultant.

“Subcontract” shall mean a contract between the Construction Manager and a Subcontractor for the performance of a portion of the Work.

“Subcontract Amount” shall mean the total amount stipulated in a Subcontract to be paid to the Subcontractor for the Subcontractor’s performance of the Subcontract.

“Subcontractor” shall mean a Person engaged by the Construction Manager to perform a portion of the Work. The term “Subcontractor” also includes any lower tier Sub-Subcontractor engaged by a Subcontractor.

“Subcontractor Application for Payment” shall mean an application for payment submitted to the Construction Manager by a Subcontractor.

“Submittal” shall mean a Shop Drawing, Sample, catalog cut or similar item for specific portions of the Work as required by the Construction Documents.

“Submittal Log” shall mean a log maintained by the Architect indicating the dates of submission of Shop Drawings and other Submittals by the Construction Manager, and their return after review by the Architect.

“Submittal Schedule” shall have the meaning set forth in **Subparagraph 4.12.5** of the General Conditions.

“Substantial Completion” shall have the meaning set forth in **Subparagraph 11.8.1** of the General Conditions.

“Substantial Completion Certificate” shall mean the certificate issued by the Architect and approved by the Authority indicating the date upon which the Project (or a designated portion thereof) is Substantially Complete.

“Substantial Completion Date” shall mean the date identified in the Architect’s Substantial Completion Certificate when the Work (or a designated portion thereof) is Substantially Complete.

“Substitution” shall mean a replacement for or alternative to an item of material or item identified in the Construction Documents which is proposed by the Construction Manager and approved in writing by Authority and Architect.

“Sub-Subcontractor” shall mean a Person engaged by a Subcontractor to perform a portion of the Work. The term “Sub-Subcontractor” also includes any lower tier Persons engaged by Sub-Subcontractor to perform a portion of the Work.

“Supplier” or **“Materialman”** shall mean a Person who has an agreement with the Architect, Construction Manager, or any member of the Project Team or any of their Subconsultants, Subcontractors or Sub-subcontractors, of any tier, to supply by sale or lease, directly or indirectly, any materials or equipment for the Work.

“Suspension” shall mean a delay, re-sequencing, stoppage and/or interruption of the Work or the Architect’s Services (in whole or in part), in response to a written directive from the Authority.

“Targeted Businesses” shall have the meaning set forth in **Paragraph 10.8** of the Construction Services Agreement.

“Targeted Business Coordinator” shall have the meaning set forth in **Paragraph 10.8** of the Construction Services Agreement.

“Targeted Business Enterprise Participation Plan” shall have the meaning set forth in Paragraph 10.8 of the Construction Services Agreement.

“Team” shall mean, the Minnesota Vikings Football, LLC, or any person who purchases or otherwise takes ownership or control of or reconstitutes the NFL team known as the Minnesota Vikings.

“Termination for Convenience” shall mean the termination of the Construction Services Agreement, the Design Services Agreement, a Trade Contract, or a Vendor Contract by the Authority without cause and for the convenience of the Authority as decided in its sole discretion.

“Termination for Default” shall mean the termination of a Party under the Contract Documents by the Authority for cause.

“Testing” shall mean, performing those tests and inspections of the Work to determine conformance with the Contract Documents.

“Third-Party Suit” shall mean a summons and complaint served by a third party who is not a member of the Project Team against a member of the Project Team, the Authority, or Team in a court of law.

“Trade Contract” shall mean a contract between the Authority and a Trade Contractor for the performance of a portion of the Project.

“Trade Contractor” shall mean a Person other than the Construction Manager or its Subcontractors that has a direct contract with the Authority to perform a portion of the Project. The term “Trade Contractor” also includes any lower tier contractor engaged by a Trade Contractor.

“Trade Contractor Work” or **“Vendor Work”** shall mean the complete and total construction or performance described in and required by the Contract Documents, including preconstruction services and construction services, whether completed or partially completed, and include all labor, materials, equipment and services required to be provided by a Trade Contractor or Vendor to fulfill Trade Contractor’s or Vendor’s obligations under its applicable Trade Contract or Vendor Contract. The Trade Contractor’s or Vendor’s Work may constitute the whole or part of the Project. Any Trade Contractor’s or Vendor’s Work includes all of the labor, materials, equipment and services to be provided by the Subcontractors, Sub-Subcontractors of any tier, material and equipment suppliers employed directly by the Trade Contractor or Vendor. The Trade Contractor’s or Vendor’s Work shall be performed in strict accordance with all provisions of the Act.

“Trademark” shall mean a trademark used by the Authority that is protected under United States or International Trademark Law. Without limiting the foregoing, the term Trademark shall also have the meaning set forth in **Paragraph 1.3** of the Design Services Agreement.

“Trade Secret” shall mean any and all information that comes into the possession, custody or control by, through, from, or on behalf of the Authority or Team without regard to form, including, without limitation, any technical or non-technical data, formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, financial plan, product plan, list of actual or potential customers or suppliers, that is not commonly known by or available to the public and which information: (1) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“Unique Elements” shall have the meaning set forth in **Paragraph 1.3** of the Design Services Agreement.

“Value Engineering” shall mean an analysis of the feasibility of alternative systems, construction, concepts, equipment and materials to identify such alternative systems, construction, concepts, equipment and materials of equivalent quality, and having equivalent characteristics and utility, to those specified in the Design Documents that can be fully specified, obtained and installed at a lower price or, in the sole judgment of the Authority and Team, more-desirable operating characteristics or greater functionality or any combination of these. Value Engineering may also include the process whereby the Design Documents are reviewed by the Project Team for the purpose of determining constructability and bringing estimated Construction Cost within the Fixed Construction Budget including reviewing Construction Manager proposals that are designed to reduce Construction Cost and enhance the Project. As part

of this process, the Design Documents are revised by the Architect as necessary to maintain the Fixed Construction Budget.

“Vendor” shall mean a party supplying FF&E, equipment, material, or other product or service to the Project under a direct contract with the Authority.

“Vendor Contract” shall mean a contract between the Authority and a Vendor for the performance of a portion of the Project.

“Work” in regard to the Construction Manager and the Construction Services Agreement shall mean the complete and total construction as described in and required by the Contract Documents, including preconstruction services and construction services, whether completed or partially completed, and includes all other labor, materials, equipment and services to be provided by the Construction Manager to fulfill its obligations under the Contract Documents. The Work of the Construction Manager may constitute the whole or a part of the Project. The Work of the Construction Manager includes all of the labor, materials, equipment and services to be provided by the Subcontractors, Sub-Subcontractors of any tier, material and equipment suppliers employed directly by the Construction Manager. The Work of the Construction Manager shall be performed in strict accordance with all provisions of the Act.

GENERAL CONDITIONS OF THE CONSTRUCTION SERVICES AGREEMENT

APPENDIX B

CONSTRUCTION MANAGER'S INSURANCE REQUIREMENTS

1. For the Construction Services Phase, the Construction Manager shall, unless otherwise approved in writing by the Authority, obtain and maintain throughout the duration of the Project (or as otherwise specified) insurance of the minimum types and in the minimum amounts described below (“**Required Insurance**”). And, for the Pre-Construction Services Phase, the Construction Manager shall, unless otherwise approved in writing by the Authority, obtain and maintain the Required Insurance of the minimum types and in the minimum amounts described in **Paragraphs 1.1, 1.2, 1.3, 1.4 and 1.6** hereof.

1.1 Commercial General Liability Insurance.

1.1.1 Combined single limit of not less than:

\$ __,000,000	Each Occurrence
\$ __,000,000	General Aggregate
\$ __,000,000	Products/Completed Operations Aggregate
\$ __,000,000	Personal and Advertising Injury
\$ __00,000	Fire Legal Liability
\$ __,000	Medical Payments

1.1.2 Coverage Required:

- Per project aggregate,
- Premises-operations,
- Explosion, collapse, underground,
- Products/completed operations (to be maintained for 12 years after Substantial Completion),
- Independent contractor,
- Independent Construction Manager's Liability,
- Blanket contractual liability,
- Personal injury liability, with employment exclusion deleted,
- Electronic data liability property damage,
- General liability primary (non-contributory),
- Additional insured endorsement (CG 20 10 11/85 or its equivalent) including waiver of subrogation in favor of the Authority and the Indemnitees and persons entitled to indemnification from the Construction Manager pursuant to the terms of the Construction Services Agreement, including additional insured coverage for both ongoing and completed operations,
- Supplementary Payments coverage for the Indemnitees of the Construction Manager for property damage, bodily injury, and personal and advertising injury, Construction Manager shall secure such endorsements or estoppel certificates from insurer as may be necessary to confirm that the Construction Services Agreement is an insured contract for purposes of the policy,
- Designated Construction Project(s) General Aggregate Limit endorsement (CG 25 03 03 97 or its equivalent),
- Operations within 50 feet of railroad,
- Hazards,
- Defense in addition to limits of liability,
- Broad form Property Damage coverage,
- Definition of Bodily Injury to include Mental Injury and Mental Anguish,
- Mobile Equipment coverage,
- Products liability,
- Claims for damages because of loss of owned or rented capital equipment and tools, including mechanics tools,
- Libel, slander, false arrest and invasion of privacy,
- Designated Location(s), and
- General Aggregate Limit endorsement (CG 25 04 03 97 or its equivalent).

Insurance is to be on an occurrence form insuring bodily injury and property damage against the hazards of: construction operations, subcontractor and independent contractor, and shall include an aggregate limit per job site endorsement. Products and completed operation insurance shall remain in force twelve (12) years following completion of project.

1.2 **Business Auto Liability Insurance.**

1.2.1 **Combined Single Limit of:**

\$ __,000,000 each Occurrence Bodily Injury and Property Damage

1.2.2 **Coverage Required:** Primary for all owned automobiles; including liability for all owned, leased, rented, hired/non-owned automobiles; medical payments, uninsured and underinsured motorists coverage.

The Authority shall be included as additional insured. An MCS-90 endorsement (or its equivalent) shall be attached when operations require this coverage.

1.3 **Workers' Compensation Insurance.**

1.3.1 **Workers' Compensation Limits:** Statutory

1.3.2 **Employers' Liability Limits:**

Bodily Injury by Accident	\$ __,000,000	Each Accident
Bodily Injury by Disease	\$ __,000,000	Policy Limit
Bodily Injury by Disease	\$ __,000,000	Each Employee

1.3.3 Workers Compensation Insurance shall include coverage for Borrowed Servant and Alternate Employer, Voluntary Compensation, Additional Insured-All persons or organizations that are required to be insured under written contract or agreement, unintentional errors or omissions, FELA (in case RR worker/employee injured due to operations of contractor or their agents), The Alternative Employer endorsement shall be attached showing the Authority in the schedule as the Alternate Employer

1.3.4 Waiver of Subrogation Endorsement in favor of the Authority

1.4 **Excess Umbrella Insurance with Limits of Not Less Than:**

\$ __,000,000	Each Occurrence
\$ __,000,000	Aggregate
\$ __,000,000	Products/Completed Operations Aggregate
\$ __,000	Retention

Coverage is following form of underlying general liability, automobile liability and employers' liability, coverage including per project aggregate, primary, additional insured/non-contributory, and waiver of subrogation. Coverage shall have "drop down" feature and "pay on behalf of" wording. Excess policy shall be primary and any applicable policy by the Authority, Additional Insureds, Indemnitees, or Subcontractors, shall be secondary and non-contributory.

For Pre-Construction Services, the Construction Manager will carry a minimum Excess Umbrella Insurance of \$25,000,000 each Occurrence and Aggregate and Products/Completed Operations Aggregate.

Additional Coverage Required when C.M. is engaged to start Construction:

1.5 **Builder's Risk.** All Risk Form. Builder's Risk coverage may be provided by the Contractor or by the Authority at Authority's discretion.

\$Full Project Value	Limit of Insurance
\$ __,000,000	Earth Movement
\$ __,000,000	Flood
\$ __,000,000	Temporary Storage
\$ __,000,000	Transit
\$TBD	Deductible – Any one Occurrence
\$TBD	Earth Movement Deductible
\$TBD	Flood Deductible
\$TBD	Windstorm Deductible
\$TBD	Materials stored off the Project Site or being shipped to the Project Site, on a replacement cost basis.

1.6 **Contractor's Protective, Professional Liability.**

\$ __,000,000	Limit of Insurance
\$ __,000,000	Annual Aggregate
\$ __0,000	Retention

Coverage shall be maintained uninterrupted for a minimum of twelve years after Substantial Completion.

1.7 Contractor's Pollution Liability.

1.7.1 Combined Single Limit of Not Less Than:

\$ __,000,000 each Occurrence/\$ __,000,000 Aggregate

1.7.2 The Authority and all Indemnitees specified in the Construction Services Agreement shall be named as an additional insured.

1.7.3 No exclusion for mold, fungus, or microbial matters of any kind.

1.7.4 Coverage must be maintained for twelve years following completion of the Project.

1.8 Excess Insurance with Limits of Not Less Than:

\$ __,000,000	Each Occurrence
\$ __,000,000	Aggregate

Coverage is following form of underlying Umbrella liability including per project aggregate, primary, additional insured/non-contributory, and waiver of subrogation.

2. The Authority does not represent or warrant that coverage and limits of the Required Insurance will be adequate to protect the Construction Manager, and such coverage and limits shall not be deemed as a limitation on the Construction Manager's liability under the indemnities provided to The Authority and Indemnitees in the Construction Services Agreement, or any other provision of the Contract Documents.
3. Prior to commencing the work, the Construction Manager shall furnish the Authority with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing that the Construction Manager maintains all Required Insurance.
 - 3.1 All certificates shall contain a provision that coverages afforded under the policies will not be cancelled, non-renewed, materially changed, or allowed to expire until at least thirty (30) days' prior written notice has been given to the Authority. The Construction Manager shall immediately furnish the Authority copies of all endorsements that are subsequently issued amending coverage or limits.
 - 3.2 The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the cancellation or material change of any insurance referred to therein.
 - 3.3 Failure of the Authority to demand such certificate or other evidence of full compliance with the Required Insurance or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Construction Manager's obligation to maintain such insurance.
4. The Authority shall have the right, but not the obligation, to prohibit the Construction Manager from entering the Project site until such certificates or other evidence that the Required Insurance has been duly placed in compliance with this **Appendix B**. The Construction Manager shall be responsible for any delays arising out of the Construction Manager's failure to comply with this **Appendix B**.
5. If the Construction Manager fails to maintain any or all of the Required Insurance, then, in addition to any other rights or remedies available to the Authority under the Agreement, the Authority shall have the right, but shall not be obligated, to (a) terminate the Agreement, or (b) purchase such insurance for the Construction Manager in which event the Construction Manager shall reimburse the Authority or provide for the cost thereof, plus ten percent (10%) as an administrative charge.
6. With respect to the Required Insurance, which the Construction Manager is obligated to maintain after Substantial Completion, an additional certificate(s) evidencing such coverage shall be promptly provided to the Authority when requested.
7. Construction Manager shall provide certified copies of all insurance policies required above prior to commencement of the Work and thereafter within ten (10) days of the Authority's written request for said copies.
8. Construction Manager shall include the above insurance requirements in all of its Subcontracts, unless otherwise agreed to in writing by the Authority. Construction Manager shall provide a schedule indicating the limits and amounts of insurance that the Construction Manager believes is appropriate for each Subcontractor. If the Construction Manager reasonably believes that lower or higher limits are appropriate for a particular Subcontractor, the Construction Manager shall present its written rationale to the Authority for such lower or higher limits, and the Authority, in its sole discretion, may agree upon such lower or higher limits. The Construction Manager shall be responsible for collecting certificates of insurance and monitoring insurance coverage of its Subcontractors and all lower tier Sub-Subcontractors to verify that the required coverage is maintained as required. All Subcontractors providing professional services shall be required to provide professional liability insurance with limits of coverage not less than required herein with respect to the Construction Manager. In addition, all Subcontractors shall include the same indemnification of the Authority and Indemnitees as provided in the Construction Services Agreement.

9. Construction Manager shall secure all Required Insurance from domestic insurer(s) authorized to do business in the State of Minnesota and reasonably satisfactory to the Authority with: (a) a claims paying ability of not less than "AA" (or the equivalent) by Standard & Pools and one other Rating Agency satisfactory to the Authority; and (b) "A:X" or better financial strength rating by AM Best. Construction Manager shall obtain the Authority's reasonable approval of the form, substance, amounts, risk coverage, sublimits, deductibles, loss payees, and insureds for all insurance. All coverages except Professional Liability insurance shall be occurrence based. Insurance shall contain such provisions as the Authority deems reasonably necessary or desirable to protect its interest, including endorsement stating that neither the Construction Manager, the Authority, nor any other party shall be deemed a co-insurer. The Construction Manager shall pay the premiums for all insurance when due and payable.

10. Owner Controlled Insurance Program (OCIP)

10.1 Reservation. The Authority may elect to implement an Owner Controlled Insurance Program on this Project. Under this type of program, the Authority will centralize the purchase of insurance for activities of the Construction Manager, Trade Contractors, Subcontractors, and all Sub-Subcontractors for Work performed at the Project Site. This consolidated purchasing of insurance is known as an Owner Controlled Insurance Program (OCIP) and will include Workers' Compensation, General Liability, and Excess/Umbrella Liability coverage. Builder's Risk and Project specific Professional Liability insurance coverage will be provided under a separate program. Participation in the OCIP will be mandatory for all tiers of Contractors and Subcontractors unless specifically exclude in writing by the Authority. The Authority also reserves the right to not implement an OCIP at any time.

10.2 Insurance Credit. The Authority and its OCIP Administrator will pursue and be entitled to receive from the Construction Manager an insurance deduction for the Construction Manager's, the Subcontractors' and Sub-Subcontractors' General Liability, Excess Liability and Workers' Compensation insurances which are provided under the OCIP, which shall be credited to the Authority against the GMP. This credit shall be known as the "Insurance Credit."

10.2.1 The Construction Manager shall be responsible to provide and to require each Subcontractor and Sub-Subcontractor to separately provide an identification and designation in their bids or proposals of all of their General Liability, Excess Liability and Worker's Compensation insurance costs. A 15% factor for profit and overhead on all insurance credits will be applied as part of the Construction Manager's, and each Subcontractor's and Sub-Subcontractor's overall insurance deduction credit. Deductible or self-retention credits or self-insured amounts may be identified in the designation required by this **Subparagraph 10.2.1** but will not be allowed for inclusion in the insurance deduction credit rates.

10.2.2 The Construction Manager, and all Subcontractor and Sub-Subcontractor bidders shall submit their bids or proposals with their insurance costs included for this Project, including a designation of the costs to provide Workers' Compensation, General Liability, and Excess Liability for this Project.

10.2.3 The GMP will be reduced by the Insurance Credit. The Insurance Credit initially shall include and be based on all insurance costs designated by the Construction Manager, Subcontractor and Sub-Subcontractors pursuant to **Subparagraph 10.2.1**. Before retainage is released to the Construction Manager, a Subcontractor, or a Sub-Subcontractor, and at such other times that the Authority may require, the Authority, with the assistance of the OCIP Administrator, shall conduct an audit of all payrolls, and other relevant records, which the Construction Manager, Subcontractor, and Sub-Subcontractor agree to produce upon demand made during normal business hours, to determine whether any additional insurance deductions are due and owing to the Authority as part of the Insurance Credit so that all of the Construction Manager's, Subcontractor's, and Sub-Subcontractor's insurance costs are captured in the Insurance Credit. The final Insurance Credit will be based on actual payrolls including any and all Contract Revisions for Changes in the Work. Under no circumstance will a final audit result in a refund of the Insurance Credit to the Construction Manager, a Subcontractor or a Sub-Subcontractor. The Authority shall have the right to apply retainage against the Insurance Credit, and to the extent that determination of the final Insurance Credit results in monies being owed to the Authority, such shall be paid on demand.

10.2.4 For the Construction Manager, and each Subcontractor, and Sub- Subcontractor, the Authority with the assistance of the OCIP Administrator shall determine an insurance credit rate that will apply to facilitate the calculation of the Insurance Credit due from the Construction Manager based on the Construction Manager's, and each Subcontractor's and Sub-Subcontractor's payroll. The Construction Manager, and each Subcontractor and Sub-Subcontractor shall be required to provide their bid estimates to the Authority and OCIP Administrator so that the estimated man-hours used can be verified for purposes of determining the insurance credit rate. In addition,

.1 Calculations will be based upon the rates that were effective at the time of award, and shall include the Insurance Credit information for all tiers of Subcontractors, and in the absence of a known Subcontractor or Sub-Subcontractor for a particular scope of work, 3.0% of the bid or proposal value will be used to estimate the initial Insurance Credit. Deductible or self-retention credits or self-insured amounts may be identified but will not be allowed for inclusion in the insurance deduction rates. Policies using composite rates must show, at a minimum, the deductible/self-retention/self-insured amount and the rating breakdown. If the credit percentage is not available, minimum and maximum rates for the program must be identified. Corporate

allocations will not be allowed. Any rate credits (other than credits for deductibles or self-retention or self-insured plans) or surcharges shown on the declaration and/or rating sheets will be used to verify actual cost and determine the insurance deduction necessary to compute the Insurance Credit.

.2 Once the insurance credit rate is determined, the Authority with the assistance of the OCIP Administrator will use that rate as the basis to determine the Insurance Credit for the duration of the contract, and such rate will not be modified.

.3 The Authority with the assistance of the OCIP Administrator will develop a loss cost allocation/rate based upon the Construction Manager's, Subcontractor's or Sub-Subcontractor's experience outside of the OCIP. In the event that the loss experience develops a loss rate that is less than 50% of the self-insured retention (deduction or SIR) it will be assumed that the full deductible has been included by line of coverage and this will be included in the insurance credit rate.

10.2.4 The Construction Manager, Subcontractor, and Sub-Subcontractor shall comply with all requests for information made by the Authority and OCIP Administrator for the purpose of conducting the audit pursuant to **Subparagraph 10.2.2** or determining the credit rate pursuant to **Subparagraph 10.2.3**.

10.2.5 Each Construction Manager, Subcontractor and Sub-Subcontractor enrolled in the OCIP must provide the following documentation:

- .1 Workers' Compensation Policy Declarations Page;
- .2 Workers' Compensation Rating/Information Page(s);
- .3 Workers' Compensation Experience Modification Worksheet;
- .4 General Liability Policy Declarations Page;
- .5 General Liability Rating/Information Page;
- .6 Excess Liability Policy Declarations Page; and
- .7 Excess Liability Rating/Information Page(s).

The foregoing shall be subject to the Authority's review and approval, which shall not unreasonably be withheld. Insurance broker and agent summary letters will not be accepted as proof of insurance.

10.2.6 Failure to comply with the procedures in this **Paragraph 10.2** may result in any or more of the following non-exclusive list of consequences:

- .1 The Authority may deny admission to the Project Site until compliance is obtained.
- .2 The Authority may withdraw or deny insurance provided by the OCIP.
- .3 The Authority may withhold progress payments until compliance is obtained.
- .4 The Authority may apply standard premium rates for Worker's Compensation and General Liability and Excess Liability insurance for the particular trade description. An experience modification of 1.0 will be applied to the Worker's Compensation Rate to determine the Insurance Credit.
- .5 The Authority may apply a minimum Insurance Credit of 3.0% of the GMP in the case of the Construction Manager, or 3% of the value of a Subcontract or Sub-subcontract.

GENERAL CONDITIONS OF THE CONSTRUCTION SERVICES AGREEMENT

APPENDIX C

AUTHORITY'S INSURANCE COVERAGES AND LIMITS

[Reserved]

GENERAL CONDITIONS OF THE CONSTRUCTION SERVICES AGREEMENT

APPENDIX E

WRITTEN NOTICE ADDRESSES

Every notice, demand, request, consent, approval or other communication in connection with breach, indemnity, suspension, termination and/or default, which either party hereto is required or desires to give or make to the other party hereto shall, notwithstanding any other provisions of the Agreement, be effective only if given in writing and delivered by hand and receipted for, or by registered or certified mail, postage-prepaid, return receipt requested, or by overnight mail as follows:

If to the Construction Manager
addressed to:

[INSERT]

with a copy to:

[INSERT]
[INSERT]

with a copy to:

[INSERT]
[INSERT]

If to the Architect, addressed to:

HKS, Inc.
1919 McKinney Avenue
Dallas, TX 75201
Attention: Craig Williams
Fax: (214) 969-3397

with a copy to:

HKS, Inc.
1919 McKinney Avenue
Dallas, TX 75201
Attention: John Hutchings
Fax: (214) 969-3397

If to the Authority, addressed to:

Metropolitan Sports Facility Authorities
900 South Fifth Street
Minneapolis, MN 55415
Attention: Ted Mondale
CEO/Executive Director
Fax: 612-332-8334

with a copy to:

Dorsey & Whitney, LLP
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402-1498
Attention: Jay L. Lindgren
Fax: 612-340-2868

with a copy to:

Fabyanske, Westra, Hart & Thomson, PA
800 LaSalle Avenue, Suite 1900
Minneapolis, MN 55402
Attention: Dean B. Thomson
Fax: 612-359-7602

If to the Team, addressed to:

Minnesota Vikings Football, LLC
9520 Viking Drive
Eden Prairie, MN 55344
Attention: Kevin Warren
Vice President of Legal Affairs &
Chief Administrative Officer
Fax No.: 952-828-6514

with a copy to:

Briggs and Morgan
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Attention: Brian Wenger, Mike Grimes, and Matt Slaven
Fax No.: 612-977-8650

Or to such other address or addresses as Authority, Architect, and Construction Manager shall from time to time designate by notice given and delivered as aforesaid.