



Document C132™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the day of in the year ("Effective Date")
(In words, indicate day, month and year.)

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

City of Northfield
801 Washington Street
Northfield, MN 55057

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

Professional Contractors, Inc. d/b/a ProCon
203 NW 1st Avenue, Suite A
Faribault, MN 55021

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

Northfield Area Fire and Rescue Service Facility Upgrade
301 5th Street West
Northfield, MN 55057

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

DJ Medin Architects
203 Northwest 1st Avenue, Suite B
Faribault, MN 55021

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 Construction Manager services as described in this Agreement and its proposal dated _____, for the construction of the Project in accordance with the Contract Documents. This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

The Owner will contract with DJ Medin Architects for the preparation of construction document and bid packages and with ProCon as Construction Manager, as advisor, to assist in the preparation of construction document and bid packages and to manage the construction phase of the Project. The Owner will let the bids for construction work. The Owner will designate the NAFRS Board as the "Owner's Representative" on all matters related to the Project.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The Project is to renovate and expand the existing fire station at 301 West 5th Street, Northfield, MN following the conceptual design developed in the NAFRS Facility Study of June 2015.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

Existing building renovation	\$1,311,688
New addition	\$1,500,632
Soft Costs	\$ 418,100

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TOTAL \$3,230,420

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

Design Review – June 2017
Complete Construction Documents – September 2017

.2 Commencement of construction:

February 2018

.3 Substantial Completion date or milestone dates:

December 2018

.4 Other:

§ 1.1.5 The Owner intends the following procurement method for the Project:

(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)

Multiple Prime Contractor public bidding pursuant to the Minnesota Uniform Municipal Contracting Act, Minn. Stat. § 471.345 ("Public Bidding").

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

Construction Manager acknowledges that NAFRS fire services from the Project site must be maintained during the Project. Contractor shall first complete the building addition in order to leave the fire station apparatus bays operational during construction. When the apparatus bays in the building addition become operational, Contractor shall transfer equipment from the original building apparatus bays to the addition apparatus bays and then upgrade the original apparatus bays.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:

(List name, address and other information.)

The Northfield Area Fire and Rescue Service (NAFRS) Board will act as the Owner's Representative in accordance with Section 5.5. Its address is 305 5th Street West, Northfield, MN 55057.

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other information.)

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§ 1.1.10 Unless provided by the Construction Manager, the Owner or Architect will retain the following consultants and contractors:

(List name, legal status, address and other information.)

.1 Land Surveyor (Owner):

Bohlen Surveying & Associates
31432 Foliage Avenue
Northfield, MN 55057

.2 Geotechnical Engineer (Owner):

Chosen Valley Testing, Inc.
1410 7th Street NW
Rochester, MN 55901

.3 Civil Engineer (Architect):

Wenck Associates
1800 Pioneer Creek Center
Maple Plain, MN 55343

.4 Other:

Structural Engineer (Architect)
Mechanical Engineer (Architect)
Electrical Engineer (Architect)
Landscape Design (Architect)
Interior Design (Architect)
Flooding Consultant (Architect)

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:

(List name, address and other information.)

Steve Underdahl
President
ProCon
203 1st Avenue NW
Faribault, MN 55021

Phone: 507.332.0990
Email: steve@procons.com

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§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

.1 Cost Estimator:
(List name, legal status, address and other information.)

None

.2 Other consultants:

None

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

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

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care provided by skilled, experienced construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project. The Construction Manager shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by the Construction Manager's breach of this standard of care. The Construction Manager shall put forth reasonable efforts to complete its duties in a timely manner. The Construction Manager shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. The Construction Manager shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified and executed. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

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

§ 2.6 The Construction Manager shall maintain the following insurance, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater, for the relevant claims period for this Project at the Construction Manager's expense.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000) per occurrence combined single limit and aggregate for bodily injury and property damage (shall include coverage for all owned, hired and non-owned vehicles).

§ 2.6.3 The Construction Manager shall provide umbrella or excess liability insurance of not less than One Million Dollars (\$ 1,000,000). The Construction Manager may additionally use umbrella or excess liability insurance to achieve the above required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than One Million Dollars (\$ 1,000,000).

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will name the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. Such proof of insurance shall confirm that the insurer has agreed that it will not cancel the insurance without giving the Owner thirty (30) days advance written notice of its intent to cancel. The Construction Manager shall likewise demand from its consultants proof of insurance meeting the foregoing requirements as a condition precedent to their engagement to perform services on the Project. The Construction Manager shall not commence work under this Contract until the Construction Manager has obtained all insurance required herein and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance. All this insurance coverage shall be maintained throughout the life of this Contract.

§ 2.6.7 The Construction Manager's policies shall be primary insurance to any other valid and collectible insurance available to the Owner with respect to any claim arising out of The Construction Manager's performance under this Contract. The Construction Manager is responsible for payment of Contract related insurance premiums and deductibles. The Construction Manager's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance. All policies listed above, except professional liability, shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis. The Construction Manager shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota.

§ 2.6.8 If the Construction Manager fails to provide the specified insurance, then the Construction Manager will defend, indemnify and hold harmless the Owner and the Owner's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the Owner (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of the Construction Manager, its subcontractors, agents, employees or delegates. The Construction Manager agrees that this indemnity shall be construed and applied in favor of indemnification. The Construction Manager also agrees that if applicable law limits or

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precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run. If a claim arises within the scope of the stated indemnity, the Owner may require the Construction Manager to: a.

Furnish and pay for a surety bond, satisfactory to the Owner, guaranteeing performance of the indemnity obligation; or b. Furnish a written acceptance of tender of defense and indemnity from the Construction Manager's insurance company. The Construction Manager will take the action required by the Owner within fifteen (15) days of receiving notice from the Owner.

§ 2.6.9 Notwithstanding the foregoing, the Owner reserves the right to immediately terminate this Contract if the Construction Manager is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against the Construction Manager.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project.

§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided

for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall work with the Architect on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. Because multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and prepare scopes of Work with the Architect to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction. Construction Manager shall keep the Owner apprised of Construction Manager-proposed Work Scopes prior to finalizing the divisions of Work by individual Prime Contract.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project 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.

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for quasi governmental authorities for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager shall assist the Architect and Owner to publish bidding documents in accordance with Public Bidding, Minnesota Statute, Section 471.345, and to conduct a pre-bid conference with prospective bidders. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids in accordance with Public Bidding, Minnesota Statutes, Section 471.345.

§ 3.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified by the Owner. If the Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall diligently endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

(Paragraph deleted)

§ 3.3.11 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.11.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.11.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.11.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the 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 correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.11.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The certification of an application for payment shall constitute the Construction Manager's representation to the Owner that the Construction Manager has reported to the Owner and the Architect all defects in the Work or deviations from the Contract Documents that have been observed by or reported to the Construction Manager.

§ 3.3.12 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

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(Paragraphs deleted)

§ 3.3.13 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for 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, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.14 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Nothing in this section is intended to limit the Construction Manager's duty to report to the Owner and the Architect all defects in the Work or deviations from the Contract Documents that have been observed by or reported to the Construction Manager. Nothing in this section is intended, or shall be construed to, negate or limit the Construction Manager's duties to the Owner in Section 2.2.

§ 3.3.15 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.16 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.17 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.18 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

§ 3.3.19 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.19.1 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Multiple Prime Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports; and
- .11 Any other items the Owner may require:

§ 3.3.19.2 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

§ 3.3.20 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all 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 site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

(Paragraphs deleted)

§ 3.3.21 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.22 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.23 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.24 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. 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

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the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.25 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.26 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.27 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 Owner, Construction Manager, Architect, Contractor and Multiple Prime Contractors. Consent shall not be unreasonably withheld.

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

§ 3.3.29 To the extent not addressed in the foregoing, the following shall be included as Basic Services by the Architect. To the extent these address the same item described in the foregoing provisions, the duties will be read in combination. If they cannot be read consistently, the more specific provision will prevail. If an ambiguity or inconsistency remains, the following provisions shall prevail. Construction Manager shall:

- .1 Interact with the Owner, Architect and NAFRS during the course of the design process to provide advice regarding constructability, value engineering, and evaluation of design options.
- .2 Provide periodic updates of detailed construction estimate as design progresses to the Owner, Architect and NAFRS.
- .3 Develop construction phasing schedule and detailed construction schedule.
- .4 Determine the bid package organization for the Project.
- .5 Prepare a detailed scope of Work document to clarify the Work required for each individual bid package.
- .6 Perform final review of and assemble all the necessary bid package documents. Make bid packages available for bidders in accordance with the City of Northfield public bidding protocol.
- .7 Handle pre-bid conferences, questions, site visits, etc. during the bid process.
- .8 Assist Owner and NAFRS in bid opening process and bid evaluation. NAFRS shall review bids and make recommendations to the Owner. The Owner, in its discretion, may accept or reject any or all bids.
- .9 Manage, coordinate and oversee all construction activity and construction scheduling.
- .10 Administrate the Project Contracts, including the review and certification of all Applications for Payment.
- .11 Have a qualified Project Superintendent present on job site during all construction activity.

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- .12 Collect and compile maintenance and operation manuals and information sheets for all as-installed equipment and fixtures.
- .13 Provide written status reports to Owner and NAFRS on a mutually agreed schedule.
- .14 Interact and meet frequently with Owner and NAFRS representatives during both pre-construction and construction phases.
- .15 Attend meetings to assist Owner and/or NAFRS, if requested by Owner and/or NAFRS.
- .16 Manage, coordinate, apply for, and arrange for Owner to purchase all applicable construction permitting except any permits which the contractors are required to obtain directly.
- .17 Get quotes for and arrange for NAFRS to purchase miscellaneous items and miscellaneous services, such as, but not limited to, waste removal, portable toilets, temporary signage, materials testing, special inspections, construction clean-up, and final cleaning.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.

(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings	Not Provided	
§ 4.1.2 Architectural interior design (B252™-2007)	Not Provided	
§ 4.1.3 Tenant-related services	Not Provided	
§ 4.1.4 Commissioning (B211™-2007)	Not Provided	
§ 4.1.5 LEED® certification (B214™-2012)	Not Provided	
§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;

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- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .4 Preparation for, and attendance at public presentations, meetings or hearings;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .7 Assistance to the Initial Decision Maker, if other than the Architect; or
- .8 Service as the Initial Decision Maker.

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 If the services covered by this Agreement have not been completed within twenty-four (24) months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.

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

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified by Owner. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner designates the Northfield Area Fire and Rescue Service (NAFRS) Board to act as the Owner's Representative concerning those matters on the Project specified in the Project Management Agreement between the Owner and NAFRS, including approval of partial payments or changes as to the time of Contract performance, provided, however, that Owner retains the right to terminate some or all of those duties at the Owner's discretion. The Construction Manager shall receive notice of any such termination or changes in the Owner's Representative's

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duties and the Owner shall endeavor to avoid any unreasonable delay in payment or decisions necessary for the Project if Owner exercises such rights with the Owner's Representative. The Owner's Representative is responsible for reviewing Change Orders in accordance with the City's Change Order Policy. Any change order that either exceeds ten percent (10%) of the total Project cost or is in the amount of \$25,000 or more, shall be recommended to the City Council for review and approval by the City Council, in its discretion, based upon the NAFRS Board's recommendation. With respect to change orders, the NAFRS Board shall follow the City's Change Order Policy.

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

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

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

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

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

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

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

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

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

(Paragraph deleted)

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. If this Contract requires, or the Construction Manager desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, the Construction Manager shall provide for such use by suitable legal agreement with the patentee or owner. If no such agreement is made, the Construction Manager shall indemnify and hold harmless the Owner from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend the Owner for any costs, liability, expenses and attorney's fees that result from any such infringement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law.

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§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Construction Manager shall indemnify, defend and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent, intentional or otherwise wrongful acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. The Architect agrees, that in order to protect itself and the Owner under the indemnity provisions set forth above, it will at all times during the term of this contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which Owner is entitled under Minnesota Statute, Chapter 466 or otherwise.

(Paragraph deleted)

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the parties agree to mediate before any dispositive motion or trial.

§ 8.2.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[X] Litigation in a court of competent jurisdiction

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 Except for amounts that are the subject of a good faith dispute, if the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums which are not the subject of a good faith dispute prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

(Paragraph deleted)

§ 9.7.1 In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for services performed.

§ 9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed and costs incurred by reason of such termination.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

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

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

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

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary.

§ 10.8 All Information related to this Agreement shall be governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

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§ 10.9 Voluntary and Knowing Action. The Construction Manager and Owner, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.

§ 10.10 Authorized Signatures. The Construction Manager and Owner each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

§ 10.11 Independent Contractor Status. The Construction Manager, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the Owner for any purpose. No statement contained in this Contract shall be construed so as to find the Construction Manager to be an employee of the Owner, and the Construction Manager shall not be entitled to any of the rights, privileges, or benefits of employees of the owner, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. The Construction Manager acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due The Construction Manager, and that it is The Construction Manager's sole obligation to comply with the applicable provisions of all Federal and State tax laws. The Construction Manager shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. The Construction Manager is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.

§ 10.12 Acceptance of Deliverables. Each deliverable shall be subject to a verification of acceptability by the Owner to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on the Owner's satisfaction or dissatisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, the Owner will notify the Construction Manager specifying reasons in reasonable detail, and the Construction Manager will, at no additional cost, conform the deliverable to stated requirements of this Contract.

§ 10.13 Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of the Owner and The Construction Manager.

§ 10.14 Records – Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, The Construction Manager agrees that the Owner, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of The Construction Manager and involve transactions relating to this Contract.

§ 10.15 Force Majeure. The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.

§ 10.16 Compliance with Laws. The Construction Manager shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which The Construction Manager is responsible.

§ 10.17 Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.

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§ 10.18 Interest by City Officials. No elected official, officer, or employee of the Owner shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

§ 10.19 Work Product. All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of the Owner upon completion of the work. The Owner may use the information for the Project for which they were prepared. Such use by the Owner shall not relieve any liability on the part of The Construction Manager.

§ 10.20 Data Practices. The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 et seq. The Construction Manager agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. The Construction Manager understands that all of the data created, collected, received, stored, used, maintained or disseminated by The Construction Manager in performing those functions that the Owner would perform is subject to the requirements of the Act, and The Construction Manager must comply with those requirements as if it were a government entity. This does not create a duty on the part of The Construction Manager to provide the public with access to public data if the public data is available from the Owner, except as required by the terms of this Contract.

§ 10.21 No Waiver. Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.

§ 10.22 Mechanic's Liens. The Construction Manager hereby covenants and agrees that The Construction Manager will not permit or allow any mechanic's or materialman's liens to be placed on the Owner's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, The Construction Manager shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that The Construction Manager may contest any such lien provided The Construction Manager first posts a surety bond, in favor of and insuring the Owner, in an amount equal to 125% of the amount of any such lien.

§ 10.23 Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.

§ 10.24 Headings and Captions. Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.

§ 10.25 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of the Owner and The Construction Manager arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.

ARTICLE 11 COMPENSATION

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

Pre-Construction Phase: pre-construction services will be billed on an hourly basis at \$85.00 per hour, not to exceed \$16,500.00

Construction Phase: construction services will be billed on an hourly basis at \$85.00 per hour, not to exceed \$135,000.00.

Invoices for services will be submitted on a monthly basis.

Init.

Should it become necessary for ProCon to retain services of outside consultants on behalf of NAFRS and the City of Northfield the cost of such shall be reimbursed at cost of service plus 5.00% margin.

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Upon submittal of invoices describing the services satisfactory to Owner, Construction Manager shall receive payment at \$85.00 per hour for listed personnel (Ex. ____), not to exceed Sixteen Thousand Five Hundred Dollars (\$16,500.00).

§ 11.1.2 For Construction Phase Services in Section 3.3:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Upon submittal of invoices describing the services satisfactory to Owner, Construction Manager shall receive payment at \$85.00 per hour for listed personnel (Ex. ____), not to exceed One Hundred Thirty-Five Thousand Dollars (\$135,000.00).

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

To be negotiated

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation.)

To be negotiated

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus five percent (5.00 %), or as otherwise stated below:

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate (\$0.00)

§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

Init.

- .7 Professional photography, and presentation materials requested by the Owner;
- .8 Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses not including jobsite field office trailer; and
- .11 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus zero percent (0 %) of the expenses incurred. The Construction Manager shall be reimbursed for actual expenses incurred without any mark-up. § 11.7

Payments to the Construction Manager

(Paragraph deleted)

§ 11.7.1 An initial payment of zero dollars (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice pursuant to the Municipal Prompt Payment Act, Minn. Stat. § 471.425 ("PPA"), which shall govern payments made under this Agreement. Amounts unpaid ninety (90) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

4.00 % per annum

§ 11.7.3 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager. The Owner's right, if any, to offset sums due the Construction Manager shall be governed by applicable law, including, but not limited to the PPA.

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. The Construction Manager shall keep and maintain accurate documentation of all claimed reimbursable expenses in such a form that they may be independently audited.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

Init.

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

Rhonda Pownell, Mayor

(Printed name and title)

OWNER (Signature)

(Printed name and title)

Deb Little, City Clerk

(Table deleted)(Paragraphs deleted)

Init.

Additions and Deletions Report for AIA® Document C132™ – 2009

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:39:00 on 03/13/2017.

PAGE 1

AGREEMENT made as of the day of in the year ("Effective Date")

...

(Name, legal status, address and other information)

City of Northfield
801 Washington Street
Northfield, MN 55057

...

Professional Contractors, Inc. d/b/a ProCon
203 NW 1st Avenue, Suite A
Faribault, MN 55021

...

Northfield Area Fire and Rescue Service Facility Upgrade
301 5th Street West
Northfield, MN 55057

...

DJ Medin Architects
203 Northwest 1st Avenue, Suite B
Faribault, MN 55021

PAGE 2

§ 1.1 Construction Manager services as described in this Agreement and its proposal dated _____, for the construction of the Project in accordance with the Contract Documents. This Agreement is based on the Initial Information set forth in this Section 1.1.

...

The Owner will contract with DJ Medin Architects for the preparation of construction document and bid packages and with ProCon as Construction Manager, as advisor, to assist in the preparation of construction document and bid packages and to manage the construction phase of the Project. The Owner will let the bids for construction work. The Owner will designate the NAFRS Board as the "Owner's Representative" on all matters related to the Project.

...

The Project is to renovate and expand the existing fire station at 301 West 5th Street, Northfield, MN following the conceptual design developed in the NAFRS Facility Study of June 2015.

...

Existing building renovation	\$1,311,688
New addition	\$1,500,632
Soft Costs	\$ 418,100
TOTAL	\$3,230,420

PAGE 3

Design Review – June 2017
Complete Construction Documents – September 2017

...

February 2018

...

December 2018

...

Multiple Prime Contractor public bidding pursuant to the Minnesota Uniform Municipal Contracting Act, Minn. Stat. § 471.345 ("Public Bidding").

...

Construction Manager acknowledges that NAFRS fire services from the Project site must be maintained during the Project. Contractor shall first complete the building addition in order to leave the fire station apparatus bays operational during construction. When the apparatus bays in the building addition become operational, Contractor shall transfer equipment from the original building apparatus bays to the addition apparatus bays and then upgrade the original apparatus bays.

...

The Northfield Area Fire and Rescue Service (NAFRS) Board will act as the Owner's Representative in accordance with Section 5.5. Its address is 305 5th Street West, Northfield, MN 55057.

PAGE 4

§ 1.1.10 Unless provided by the Construction Manager, the Owner or Architect will retain the following consultants and contractors:

...

.1 Land Surveyor: Surveyor (Owner):

Bohlen Surveying & Associates
31432 Foliage Avenue
Northfield, MN 55057

...

.2 ~~Geotechnical Engineer:~~ Engineer (Owner):

Chosen Valley Testing, Inc.
1410 7th Street NW
Rochester, MN 55901

...

.3 ~~Civil Engineer:~~ Engineer (Architect):

Wenck Associates
1800 Pioneer Creek Center
Maple Plain, MN 55343

...

.4 Other:

Structural Engineer (Architect)
Mechanical Engineer (Architect)
Electrical Engineer (Architect)
~~(List any other consultants retained by the Owner, such as a Project or Program Manager, or~~
~~construction contractor.)~~ Landscape Design (Architect)
Interior Design (Architect)
Flooding Consultant (Architect)

...

Steve Underdahl
President
ProCon
203 1st Avenue NW
Faribault, MN 55021

Phone: 507.332.0990
Email: steve@procons.com

PAGE 5

None

...

None

...

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ~~ordinarily~~ provided by skilled, experienced construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project. The Construction Manager shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by the Construction Manager's breach of this standard of care. The Construction Manager shall put forth reasonable efforts to complete its duties in a timely manner. The Construction Manager shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. The Construction Manager shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser ~~Edition-Edition, as modified and executed.~~ The Construction Manager shall not be responsible for actions taken by the Architect.

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

§ 2.6 The Construction Manager shall maintain the following ~~insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~ insurance, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater, for the relevant claims period for this Project at the Construction Manager's expense.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000) per occurrence combined single limit and aggregate for bodily injury and property ~~damage-damage~~ (shall include coverage for all owned, hired and non-owned vehicles).

§ 2.6.3 The Construction Manager shall provide umbrella or excess liability insurance of not less than One Million Dollars (\$ 1,000,000). The Construction Manager may additionally use umbrella or excess liability insurance to achieve the above required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than One Million Dollars (\$ 1,000,000).

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will ~~show name~~ the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. Such proof of insurance shall confirm that the insurer has agreed that it will not cancel the insurance without giving the Owner thirty (30) days advance written notice of its intent to cancel. The Construction Manager shall likewise demand from its consultants proof of insurance meeting the foregoing requirements as a condition precedent to their engagement to perform services on the Project. The Construction Manager shall not commence work under this Contract until the Construction Manager has obtained all insurance required herein and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance. All this insurance coverage shall be maintained throughout the life of this Contract.

§ 2.6.7 The Construction Manager's policies shall be primary insurance to any other valid and collectible insurance available to the Owner with respect to any claim arising out of The Construction Manager's performance under this Contract. The Construction Manager is responsible for payment of Contract related insurance premiums and deductibles. The Construction Manager's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance. All policies listed above, except professional liability, shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis. The Construction Manager shall obtain insurance policies from

insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota.

§ 2.6.8 If the Construction Manager fails to provide the specified insurance, then the Construction Manager will defend, indemnify and hold harmless the Owner and the Owner's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the Owner (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of the Construction Manager, its subcontractors, agents, employees or delegates. The Construction Manager agrees that this indemnity shall be construed and applied in favor of indemnification. The Construction Manager also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run. If a claim arises within the scope of the stated indemnity, the Owner may require the Construction Manager to: a. Furnish and pay for a surety bond, satisfactory to the Owner, guaranteeing performance of the indemnity obligation; or b. Furnish a written acceptance of tender of defense and indemnity from the Construction Manager's insurance company. The Construction Manager will take the action required by the Owner within fifteen (15) days of receiving notice from the Owner.

§ 2.6.9 Notwithstanding the foregoing, the Owner reserves the right to immediately terminate this Contract if the Construction Manager is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against the Construction Manager.

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§ 3.2.11 The Construction Manager shall ~~provide recommendations to the Owner~~ work with the Architect on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. ~~If Because multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required prepare scopes of Work with the Architect~~ to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction. Construction Manager shall keep the Owner apprised of Construction Manager-proposed Work Scopes prior to finalizing the divisions of Work by individual Prime Contract.

...

§ 3.2.19 The Construction Manager shall ~~develop bidders' interest in the Project and establish bidding schedules. 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 issue the current Project schedule with each set of bidding documents, assist the Architect and Owner to publish bidding documents in accordance with Public Bidding, Minnesota Statute, Section 471.345, and to conduct a pre-bid conference with prospective bidders.~~ The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of ~~bids~~ bids in accordance with Public Bidding, Minnesota Statutes, Section 471.345.

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§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser ~~Edition~~ Edition, as modified by the Owner. If the

Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Construction Manager’s services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

...

§ 3.3.9 The Construction Manager shall diligently endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

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~~§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project.~~

§ 3.3.11 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.11.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.11.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor’s Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors’ Applications for Payment by summarizing information from each Contractor’s Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors’ Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.11.3 The Construction Manager’s certification for payment shall constitute a representation to the Owner, based on the Construction Manager’s evaluations of the Work and on the data comprising the Contractors’ Applications for Payment, that, to the best of the Construction Manager’s knowledge, information and belief, the 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 correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.11.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor’s own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The certification of an application for payment shall constitute the Construction Manager’s representation to the Owner that the Construction Manager has reported to the Owner and the Architect all defects in the Work or deviations from the Contract Documents that have been observed by or reported to the Construction Manager.

~~§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.~~
review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making

recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

~~§ 3.3.12.1~~ The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

~~§ 3.3.12.2~~ Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- ~~1~~ — Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- ~~2~~ — Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

~~§ 3.3.12.3~~ The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the 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 correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

~~§ 3.3.12.4~~ The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make

arrangements for 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, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for 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, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures. advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Nothing in this section is intended to limit the Construction Manager's duty to report to the Owner and the Architect all defects in the Work or deviations from the Contract Documents that have been observed by or reported to the Construction Manager. Nothing in this section is intended, or shall be construed to, negate or limit the Construction Manager's duties to the Owner in Section 2.2.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise. review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7. Utilizing the submittal schedules provided by each Contractor,

the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect. The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.19.1 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Multiple Prime Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports; and
- .11 Any other items the Owner may require;

§ 3.3.19.2 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require;

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require. Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and

other Modifications, in good order and marked currently to record all 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 site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

~~§ 3.3.20.1~~ The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- ~~.1 — Work completed for the period;~~
- ~~.2 — Project schedule status;~~
- ~~.3 — Submittal schedule and status report, including a summary of remaining and outstanding submittals;~~
- ~~.4 — Request for information, Change Order, and Construction Change Directive status reports;~~
- ~~.5 — Tests and inspection reports;~~
- ~~.6 — Status report of nonconforming and rejected Work;~~
- ~~.7 — Daily logs;~~
- ~~.8 — Summary of all Multiple Prime Contractors' Applications for Payment;~~
- ~~.9 — Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;~~
- ~~.10 — Cash flow and forecast reports; and~~
- ~~.11 — Any other items the Owner may require;~~

~~§ 3.3.20.2~~ In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- ~~.1 — Contractor's work force report;~~
- ~~.2 — Equipment utilization report;~~
- ~~.3 — Cost summary, comparing actual costs to updated cost estimates; and~~
- ~~.4 — Any other items as the Owner may require;~~

~~§ 3.3.21~~ Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all 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 site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner. The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

~~§ 3.3.22~~ The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work. With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

~~§ 3.3.23~~ With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require. When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for

their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.24 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. 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 Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete. final inspections.

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. 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 Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections. The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals. deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents. 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 Owner, Construction Manager, Architect, Contractor and Multiple Prime Contractors. Consent shall not be unreasonably withheld.

§ 3.3.28 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 Owner, Construction Manager, Architect, Contractor and Multiple Prime Contractors. Consent shall not be unreasonably withheld. Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.3.29 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance. To the extent not addressed in the foregoing, the following shall be included as Basic Services by the Architect. To the extent these address the same item described in the foregoing provisions, the

duties will be read in combination. If they cannot be read consistently, the more specific provision will prevail. If an ambiguity or inconsistency remains, the following provisions shall prevail. Construction Manager shall:

- .1 Interact with the Owner, Architect and NAFRS during the course of the design process to provide advice regarding constructability, value engineering, and evaluation of design options.
- .2 Provide periodic updates of detailed construction estimate as design progresses to the Owner, Architect and NAFRS.
- .3 Develop construction phasing schedule and detailed construction schedule.
- .4 Determine the bid package organization for the Project.
- .5 Prepare a detailed scope of Work document to clarify the Work required for each individual bid package.
- .6 Perform final review of and assemble all the necessary bid package documents. Make bid packages available for bidders in accordance with the City of Northfield public bidding protocol.
- .7 Handle pre-bid conferences, questions, site visits, etc. during the bid process.
- .8 Assist Owner and NAFRS in bid opening process and bid evaluation. NAFRS shall review bids and make recommendations to the Owner. The Owner, in its discretion, may accept or reject any or all bids.
- .9 Manage, coordinate and oversee all construction activity and construction scheduling.
- .10 Administrate the Project Contracts, including the review and certification of all Applications for Payment.
- .11 Have a qualified Project Superintendent present on job site during all construction activity.
- .12 Collect and compile maintenance and operation manuals and information sheets for all as-installed equipment and fixtures.
- .13 Provide written status reports to Owner and NAFRS on a mutually agreed schedule.
- .14 Interact and meet frequently with Owner and NAFRS representatives during both pre-construction and construction phases.
- .15 Attend meetings to assist Owner and/or NAFRS, if requested by Owner and/or NAFRS.
- .16 Manage, coordinate, apply for, and arrange for Owner to purchase all applicable construction permitting except any permits which the contractors are required to obtain directly.
- .17 Get quotes for and arrange for NAFRS to purchase miscellaneous items and miscellaneous services, such as, but not limited to, waste removal, portable toilets, temporary signage, materials testing, special inspections, construction clean-up, and final cleaning.

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§ 4.1.1 Measured drawings	<u>Not Provided</u>	
§ 4.1.2 Architectural interior design (B252™-2007)	<u>Not Provided</u>	
§ 4.1.3 Tenant-related services	<u>Not Provided</u>	
§ 4.1.4 Commissioning (B211™-2007)	<u>Not Provided</u>	
§ 4.1.5 LEED® certification (B214™-2012)	<u>Not Provided</u>	

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User Notes:

(1112894531)

§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)	Not Provided	
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- .4 Preparation for, and attendance at, ~~a public presentation, meeting or hearing~~ at public presentations, meetings or hearings;

...

§ 4.3.3 If the services covered by this Agreement have not been completed within twenty-four (24) months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

...

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser ~~Edition~~ Edition, as modified by Owner. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 ~~The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.~~ designates the Northfield Area Fire and Rescue Service (NAFRS) Board to act as the Owner's Representative concerning those matters on the Project specified in the Project Management Agreement between the Owner and NAFRS, including approval of partial payments or changes as to the time of Contract performance, provided, however, that Owner retains the right to terminate some or all of those duties at the Owner's discretion. The Construction Manager shall receive notice of any such termination or changes in the Owner's Representative's duties and the Owner shall endeavor to avoid any unreasonable delay in payment or decisions necessary for the Project if Owner exercises such rights with the Owner's Representative. The Owner's Representative is responsible for reviewing Change Orders in accordance with the City's Change Order Policy. Any change order that either exceeds ten percent (10%) of the total Project cost or is in the amount of \$25,000 or more, shall be recommended to the City Council for review and approval by the City Council, in its discretion, based upon the NAFRS Board's recommendation. With respect to change orders, the NAFRS Board shall follow the City's Change Order Policy.

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~~§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.~~

...

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. If this Contract requires, or the Construction Manager desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, the Construction Manager shall provide for such use by suitable legal agreement with the patentee or owner. If no such agreement is made, the Construction Manager shall indemnify and hold harmless the Owner from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or

copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend the Owner for any costs, liability, expenses and attorney's fees that result from any such infringement.

...

~~§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1. law.~~

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~~§ 8.1.3 The Construction Manager shall indemnify indemnify, defend and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent-negligent, intentional or otherwise wrongful acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. The Architect agrees, that in order to protect itself and the Owner under the indemnity provisions set forth above, it will at all times during the term of this contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which Owner is entitled under Minnesota Statute, Chapter 466 or otherwise.~~

~~§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.~~

~~§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution-mediation. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the parties agree to mediate before any dispositive motion or trial.~~

~~§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties do not resolve a~~

dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☒ Litigation in a court of competent jurisdiction

~~§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:~~
~~(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)~~

~~☐ Arbitration pursuant to Section 8.3 of this Agreement~~

~~☐ Litigation in a court of competent jurisdiction~~

~~☐ Other: (Specify)~~

§ 8.3 Arbitration

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 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, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

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

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

§ 8.3.4 Consolidation or Joinder

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

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an~~

additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

§ 9.1 ~~If~~ Except for amounts that are the subject of a good faith dispute, if the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums ~~due which are not the subject of a good faith dispute~~ prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

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§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then ~~due and all Termination Expenses as defined in Section 9.7. due.~~

~~§ 9.7 Termination Expenses are in addition to compensation for the Construction Manager's services and include expenses directly attributable to termination for which the Construction Manager is not otherwise compensated, plus an amount for the Construction Manager's anticipated profit on the value of the services not performed by the Construction Manager, as set forth below.~~

§ 9.7.1 In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for services ~~performed, costs incurred by reason of such termination and reasonable overhead and profit on Preconstruction services not completed during the Preconstruction Phase.~~ performed.

§ 9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed and costs incurred by reason of such ~~termination, along with reasonable overhead and profit on services not completed during the Construction Phase.~~ termination.

...

§ 10.1 This Agreement shall be governed by the law of the place where the Project is ~~located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ located.

...

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. ~~The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.~~

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. All Information related to this Agreement shall be governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

§ 10.9 Voluntary and Knowing Action. The Construction Manager and Owner, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.

§ 10.10 Authorized Signatures. The Construction Manager and Owner each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

§ 10.11 Independent Contractor Status. The Construction Manager, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the Owner for any purpose. No statement contained in this Contract shall be construed so as to find the Construction Manager to be an employee of the Owner, and the Construction Manager shall not be entitled to any of the rights, privileges, or benefits of employees of the owner, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. The Construction Manager acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due The Construction Manager, and that it is The Construction Manager's sole obligation to comply with the applicable provisions of all Federal and State tax laws. The Construction Manager shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. The Construction Manager is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.

§ 10.12 Acceptance of Deliverables. Each deliverable shall be subject to a verification of acceptability by the Owner to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on the Owner's satisfaction or dissatisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, the Owner will notify the Construction Manager specifying reasons in reasonable detail, and the Construction Manager will, at no additional cost, conform the deliverable to stated requirements of this Contract.

§ 10.13 Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of the Owner and The Construction Manager.

§ 10.14 Records – Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, The Construction Manager agrees that the Owner, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of The Construction Manager and involve transactions relating to this Contract.

§ 10.15 Force Majeure. The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.

§ 10.16 Compliance with Laws. The Construction Manager shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which The Construction Manager is responsible.

§ 10.17 Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.

§ 10.18 Interest by City Officials. No elected official, officer, or employee of the Owner shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

§ 10.19 Work Product. All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of the Owner upon completion of the work. The Owner may use the information for the Project for which they were prepared. Such use by the Owner shall not relieve any liability on the part of The Construction Manager.

§ 10.20 Data Practices. The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 et seq. The Construction Manager agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. The Construction Manager understands that all of the data created, collected, received, stored, used, maintained or disseminated by The Construction Manager in performing those functions that the Owner would perform is subject to the requirements of the Act, and The Construction Manager must comply with those requirements as if it were a government entity. This does not create a duty on the part of The Construction Manager to provide the public with access to public data if the public data is available from the Owner, except as required by the terms of this Contract.

§ 10.21 No Waiver. Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.

§ 10.22 Mechanic's Liens. The Construction Manager hereby covenants and agrees that The Construction Manager will not permit or allow any mechanic's or materialman's liens to be placed on the Owner's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, The Construction Manager shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that The Construction Manager may contest any such lien provided The Construction Manager first posts a surety bond, in favor of and insuring the Owner, in an amount equal to 125% of the amount of any such lien.

§ 10.23 Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.

§ 10.24 Headings and Captions. Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.

§ 10.25 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of the Owner and The Construction Manager arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.

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Pre-Construction Phase: pre-construction services will be billed on an hourly basis at \$85.00 per hour, not to exceed \$16,500.00

Construction Phase: construction services will be billed on an hourly basis at \$85.00 per hour, not to exceed \$135,000.00.

Invoices for services will be submitted on a monthly basis.

Should it become necessary for ProCon to retain services of outside consultants on behalf of NAFRS and the City of Northfield the cost of such shall be reimbursed at cost of service plus 5.00% margin.

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Upon submittal of invoices describing the services satisfactory to Owner, Construction Manager shall receive payment at \$85.00 per hour for listed personnel (Ex. _____), not to exceed Sixteen Thousand Five Hundred Dollars (\$16,500.00).

...

Upon submittal of invoices describing the services satisfactory to Owner, Construction Manager shall receive payment at \$85.00 per hour for listed personnel (Ex. _____), not to exceed One Hundred Thirty-Five Thousand Dollars (\$135,000.00).

...

To be negotiated

...

To be negotiated

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus five percent (5.00 %), or as otherwise stated below:

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.10 Site office expenses; expenses not including jobsite field office trailer; and

...

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus ~~percent (—%) of the expenses incurred.~~

zero percent (0 %) of the expenses incurred. The Construction Manager shall be reimbursed for actual expenses incurred without any mark-up.

§ 11.7 Payments to the Construction Manager

§ 11.7.1 An initial payment of zero dollars (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's ~~invoice. Amounts unpaid—(~~ invoice pursuant to the Municipal Prompt Payment Act, Minn. Stat. § 471.425 ("PPA"), which shall govern payments made under this Agreement. Amounts unpaid ninety (90) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

%—4.00 % per annum

§ 11.7.3 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding. Manager. The Owner's right, if any, to offset sums due the Construction Manager shall be governed by applicable law, including, but not limited to the PPA.

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. The Construction Manager shall keep and maintain accurate documentation of all claimed reimbursable expenses in such a form that they may be independently audited.

...

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

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

...

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)
Rhonda Pownell, Mayor

(Printed name and title)

OWNER (Signature)

(Printed name and title)
Deb Little, City Clerk

OWNER (Signature)

**CONSTRUCTION
MANAGER (Signature)**

(Printed name and title)

(Printed name and title)

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 — AIA Document C132™ 2009, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 — AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 — AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .4 — Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, James M. Strommen, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:39:00 on 03/13/2017 under Order No. 7158015942_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document C132™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)