



**MINNESOTA
SPORTS FACILITIES
AUTHORITY**

Minnesota Sports Facilities Authority
1005 4th Street South, Minneapolis, MN 55415

**Secure Perimeter Project
REQUEST FOR PROPOSALS (RFP) – ADDENDUM 1 – AUGUST 29, 2022
DESIGN SERVICES AGREEMENT**

The following revisions apply to the Request for Proposals for the Secure Perimeter Project:

Attached is the Design Services Agreement for the Secure Perimeter Project.

End of Addendum 1.



**AGREEMENT BETWEEN
THE AUTHORITY AND ARCHITECT**

DESIGN SERVICES AGREEMENT

THIS AGREEMENT, made as of the __ day of _____ in the year of 2022.

BY AND BETWEEN

The **Authority:**

MINNESOTA SPORTS FACILITIES AUTHORITY

1005 4th Street South
Minneapolis, MN 55415

and the **ARCHITECT:**

[INSERT]

For the following **PROJECT:**

A secured perimeter on the south, east, and west sides of the Stadium

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(TO BE INSERTED)

RECITALS

WHEREAS, the developer of the Project is the Minnesota Sports Facilities Authority, a public body, corporate and politic and political subdivision of the State of Minnesota (the “**Authority**” or “**Owner**”); and

WHEREAS, in 2012, the State of Minnesota enacted 2012 Minnesota Laws, Chapter 299 (the “**Act**”), to establish the Authority and to provide for the construction, financing, and long-term use of a stadium now known as U.S. Bank Stadium (the “**Stadium**”) and related stadium infrastructure as a venue for professional football and a broad range of other civic, community, athletic, educational, cultural and commercial activities; and

WHEREAS, as set forth in the Act, the Authority may make capital improvements to design, development and construction of the Stadium and the Stadium Infrastructure; and

WHEREAS, the Authority desires to make sure perimeter capital improvements at the south, west, and east sides of the Stadium (the “**Project**”); and

WHEREAS, the Minnesota Vikings Football, LLC, a Delaware limited liability company authorized and doing business in the State of Minnesota (defined as the “**Team**” for purposes hereof) is a tenant of the Stadium; and

WHEREAS, the Authority has engaged the services of The Tegra Group, Inc. as its representative to assist in the planning, development, design and construction of the Project; and

WHEREAS, the Authority desires to retain the Architect to provide Design Services pursuant to the terms and conditions of this Design Services Agreement; and

WHEREAS, by virtue of this Design Services Agreement, the Architect shall be responsible to complete all Design Services, including preparation of Construction Documents in accordance with all requirements of this Design Services Agreement; and

WHEREAS, the Authority and Architect acknowledge and agree that the intent of this Design Services Agreement is for the Architect to provide the complete Design Services for all aspects of the Work, and the Architect will be responsible to coordinate the design and engineering of all Work, including the services of all Subconsultants and Consultants, coordination of any and all Drawings and Specifications in order to provide the complete Design Services and Construction Documents necessary for the Construction Manager to complete the Work; and

WHEREAS, the Construction Manager’s Work for the Project shall be provided by a person or entity who is lawfully licensed to perform construction services in the State where the Project is located; and

WHEREAS, the Parties desire to set forth the terms of their agreement in this writing to be effective as of the date set forth above.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration contained in this Design Services Agreement, the sufficiency and receipt of which is hereby acknowledged, the Architect and the Authority agree as follows:

ARTICLE 1

GENERAL PROVISIONS

1.1 Incorporation

- 1.1.1 Each of the Recitals set forth above is expressly incorporated herein and becomes a part of this Design Services Agreement.
- 1.1.2 Each of the Exhibits attached to this Design Services Agreement is expressly incorporated herein and becomes a part of this Design Services Agreement. In the event of any inconsistency between the provisions of this Design Services Agreement, the Exhibits, or of any modification to this Design Services Agreement, the more strict or stringent provisions shall control as determined by the Authority.
- 1.1.3 Capitalized terms herein have the meanings set forth in Appendix A of the General Conditions included as Exhibit 7 hereto.

1.2 Intent

- 1.2.1 It is the intent of this Design Services Agreement to engage the Architect to provide the complete and comprehensive Design Services that will be required to complete the Work. The Authority and Team are relying on the Architect's experience with secure perimeters and complex sports and entertainment venues and, accordingly, the Architect acknowledges and agrees that the Design Services as described herein are inclusive of the complete planning, architectural design, engineering and other related services that will be required to complete the Work. The Architect has completed a careful and thorough review of this Design Services Agreement, specifically including the Description of Designated Services for Architecture/Engineering Services included as Exhibit 1 to this Design Services Agreement, and acknowledges and agrees that there are no deficiencies in the description of the Design Services herein, specifically including Exhibit 1 hereof, that would in any manner be inconsistent with the intent of this Subparagraph 1.2.1. Failure of the Architect to identify any such deficiencies prior to execution of this Design Services Agreement shall forever bar and prohibit the Architect from seeking compensation as an Additional Service for any costs incurred to complete such services later determined to be necessary to complete the Work.
- 1.2.2 It is the intent of the Parties to limit and protect the Authority, Team and all of the Indemnitees from and against any and all exposure to claims, liabilities and legal, equitable or administrative actions of any kind resulting from the Design Services. Accordingly, the Architect is solely responsible for the completion of all Design Services and shall bear the responsibility and any liabilities associated with the completion of the Design Services necessary to complete the Work.
- 1.2.3 It is the intent of the Parties that the Contract Documents to be prepared by the Architect shall include all items necessary for the Construction Manager and Trade Contractors' proper execution and completion of the Work. Design Services not expressly set forth in the Design Services Agreement but reasonably inferable from the Design Services Agreement, shall be included as part of the Architect's duties under this Design Services Agreement without additional cost to the Authority.
- 1.2.4 It is the intent of the Parties that the Architect be solely responsible to coordinate all Drawings and Specifications and to conduct continuous review of all Design Documents for consistency, clarity and completeness and to make all necessary modifications or to complete the Drawings and Specifications as required by the Authority and to adhere to

the Standard of Care to complete the Construction Documents with the consistency, clarity and completeness required to protect the interests of the Authority and Team.

- 1.2.5 Architect acknowledges and agrees that the Project is a public project and the Project will be used for public purposes and that all of the Architect's services hereunder are in furtherance of a public project.

1.3 Ownership and Use of Documents

- 1.3.1 The Architect acknowledges and agrees that the Authority is the sole and exclusive owner of, and Architect hereby unconditionally and irrevocably transfers and assigns to the Authority all worldwide rights, title and interest in and to the Design Documents and other documents or data related to the Project, and any and all designs, blueprints, patterns, instructions, codes, artwork, copy, materials, drawings, models, samples, (and the electronic methods of reproducing such documents, "**Electronic Data**") and all other works relating to, and other information necessary to recreate, such Design Documents and other documents or data produced or prepared by Architect and/or its Subconsultants or any other Person in contract with the Architect and referred to above and/or relating to this Design Services Agreement (collectively, the "**Design Document Works**"), including, without limitation, the copyright, trademark and service mark rights, patents, moral rights, intellectual property rights, and all proprietary rights of any kind, nature or description, relating to the Design Document Works that may be secured under the laws now or hereinafter in effect in the United States of America or any other country. Architect and its Subconsultants further agree that for copyright purposes the Design Document Works produced or prepared by Architect and/or its Subconsultants and/or referred to above in connection with the Design Document Works shall be considered works made for hire under applicable law, specially ordered or commissioned by the Authority. If, and to the extent that, said Design Document Works are deemed not to be works made for hire by a court of competent jurisdiction or an arbitrator, then this Agreement shall constitute an irrevocable assignment and transfer to the Authority of the worldwide copyright in all such Design Document Works, including, without limitation, the exclusive rights to reproduce, perform and distribute the Design Document Works and any derivative works created from the Design Document Works in any form or media throughout the world. Any trademark owned by the Authority, the Team, a Consultant or any other Person in contract with the Authority or the Team that are used in the Design Document Works or any derivatives thereof shall continue to be owned by the respective party. In addition, Architect and its Subconsultants agree that all rights in and to trademarks, service marks and/or trade dress ("**Trademarks**") resulting from Architect's or its Subconsultants' creation of the Design Document Works shall be owned by the Authority worldwide, and that any rights Architect or any of its Subconsultants may have in such Trademarks are hereby irrevocably assigned and transferred to the Authority, together with any and all goodwill associated with the Trademarks. Architect agrees to perform any and all acts necessary or helpful to assist the Authority in registering, establishing, securing, defending, enforcing or otherwise protecting the Authority's rights in the Trademarks and copyrights in the Design Document Works. The Authority shall have the sole right to bring enforcement actions for infringement of any and all rights in the Design Document Works, and the Architect and its Subconsultants hereby assign any causes of action that may have accrued or will accrue with respect to the Design Document Works. Such assignment and transfer shall be in perpetuity or for the longest period otherwise permitted by law, without the necessity of further consideration. To effectuate the transfer to the Authority of free and clear rights, title and interest in and to all of the foregoing, Architect agrees that it shall obtain from each of its Subconsultants and any Person in contract with the Authority, all of each Subconsultant's and such Person's rights, title and interest in and to the Design Document Works and/or any works relating to the Design Document Works as described above. No rights shall be or hereby are reserved by Architect, its Subconsultants or any other Person in contract with the Architect. The Authority may use the Design Document Works for

purposes of developing, constructing and maintaining the Project and for other purposes, but shall not use the Design Document Works for another stadium project unless the Authority holds the Architect harmless from such use.

- 1.3.2 The Architect shall include the provisions of **Subparagraph 1.3.1** in each professional services subcontract entered into in connection with the Project, as modified in such contracts to reflect that its Subconsultants or other Persons in contract with the Architect in such subcontracts are subject to the same obligations towards the Authority to which the Architect is subject under **Subparagraph 1.3.1**. The Architect shall require all of the foregoing Subconsultants and any Person in contract with the Architect to include the same modified provisions in each and every professional services subcontract that the Subconsultants or such Person enters into in connection with the Project.
- 1.3.3 Upon completion or termination of this Design Services Agreement, or upon the issuance by the Authority of a written change order deleting all or portions of the scope of Design Services or task(s) to be provided or performed by the Architect, all of the above Design Document Works, to the extent requested in writing by the Authority, shall be delivered by the Architect to the Authority within seven (7) calendar days of the Authority making such a request. Architect shall deliver the Design Document Works in both hard copy and as Electronic Data. The means by which the Electronic Data is transferred may include, but are not limited to, electronic mail, File Transfer Protocol (FTP) sites and disc copies transmitted between the parties in this Agreement. Architect reserves the right to retain hard copy originals in addition to electronic copies of the Electronic Data transferred. The Architect and Authority acknowledge and agree that in the event the Electronic Data contains errors as a result of the transferring of the Electronic Data from the Architect's system and format to an alternate system or format, the Architect shall revise such Electronic Data to the extent necessary to correct such errors and inconsistencies.
- 1.3.4 The Architect, at its expense, may make and retain copies of all Design Document Works delivered to the Authority for reference and internal use. The Architect shall not, and agrees not to, use any of these Design Document Works, and data and information contained therein on any other project or for any other client without the prior expressed written permission of the Authority.
- 1.3.6 The Architect shall provide the Authority with immediate access to the Architect's files, reports, data, submissions and other material prepared by the Architect for the Project, when and as requested by the Authority. Architect agrees to retain all documents in both graphic and electronic form pertaining to the performance of Design Services and Additional Services under the Design Services Agreement for twelve (12) years following the later of the Authority's final payment to the Architect or termination of the Design Services Agreement.
- 1.3.7 The terms and provisions of this **Paragraph 1.3** shall survive the expiration, suspension or termination of this Design Services Agreement.

ARTICLE 2

ARCHITECT'S RESPONSIBILITIES

2.1 Design Services and Responsibilities

- 2.1.1 The Architect shall have the obligations and responsibilities set forth in this Design Services Agreement, including the General Conditions included as **Exhibit 7** hereof. Whenever the Contract Documents require action by the Architect, the Architect shall take appropriate action and respond diligently to address all matters related to the Design

Services. The Architect will provide adequate resources to complete the Design Services and at all times to address the interests of the Authority and Team.

2.1.3 Design Services

.1 The Architect shall provide the Design Services, pursuant to the terms and conditions of this Design Services Agreement, including all required architectural, civil, structural, landscape architecture, construction administration, and other professional architectural and engineering services, coordination of the Construction Documents among and between the Project Team and the Authority, as required to complete the Work, including without limitation those described in Exhibit 1 hereto. The Architect shall promptly provide information to the Authority and Team to allow timely decisions.

.2 The Architect shall also perform such services as are required under the Contract Documents and General Conditions and as are applicable to the Design Services so that the Work can be timely and successfully completed by the Construction Manager and Trade Contractors, and the Architect shall be bound by all of the terms and conditions contained in the Contract Documents and General Conditions that pertain to the Architect and that are otherwise included in the Design Services.

2.1.4 The professional obligations of the Architect shall be undertaken and performed in the best interest of the Project. Nothing contained in this Design Services Agreement shall create any professional obligation, liability or responsibility of the Authority, Team or the Indemnitees to perform any aspect of the Design Services being provided by the Architect under this Design Services Agreement, which Design Services shall be the sole and absolute responsibility and liability of the Architect. The Architect shall review Applicable Laws relevant to the Design Services, and shall also review NFL Rules and Regulations relating to the Project, and shall execute the Design Services in compliance with such Applicable Laws and the NFL Rules and Regulations. The Architect represents that it is knowledgeable of the Applicable Laws, NFL Rules and Regulations, and all codes, standards, rules and regulations applicable to projects of this type in Minnesota, including all health, safety, fire, environmental, building and zoning codes, rules and regulations, and by this representation agrees to comply with each of the foregoing. Architect shall utilize the Standard of Care to prepare the Design Documents in compliance with Applicable Laws and the NFL Rules and Regulations. All Design Services shall be performed in accordance with the Standard of Care whether performed by the Architect, a Subconsultant or any person engaged directly or indirectly by the Architect.

2.1.7 Architect shall participate in the Value Engineering program developed by the Authority, Architect and Construction Manager to provide alternate solutions, systems, materials or techniques to achieve Project requirements. The Value Engineering program shall encompass all major Project elements and will consist of such sessions as are necessary from time to time based on the phase of completion of the Design Documents. The Architect, in conjunction with Construction Manager, shall provide, as appropriate, alternative design solutions regarding major design features to allow the Authority to ascertain that the recommended design achieves a desirable and practical programmatic and economic solution.

2.1.8 Architect shall coordinate with, and provide input and documentation as required by, Consultants who are preparing the environmental assessment worksheet (“EAW”), environmental impact statement (“EIS”), or any other environmental reviews, assessments or reports required under the Applicable Law or deemed reasonably necessary by Authority.

- 2.1.12 Architect shall inform the Authority of any tests, inspections, studies, analyses or reports that Architect deems necessary or advisable to be performed by or for the Authority in relation to the Design Services or Contract Documents.
- 2.1.14 Architect acknowledges and agrees that the design of the Project and all improvements shall be in compliance with the then-current understanding and interpretation (as of the date of the relevant Design Documents) of the Americans with Disabilities Act Guidelines, Appendix A to the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 through 12213, as well as any other Applicable Laws governing the same or similar subject matter, NFL Rules and Regulations and with adherence to any Governmental Authority having jurisdiction regarding access to the Project by the physically handicapped.
- 2.1.15 Architect is required to analyze all material aspects of the Stadium and adjacent property, and their respective utility systems and other infrastructure, including existing and publicly planned transportation systems, to the extent readily observable or based on materials regarding the Stadium Site and Adjacent Property that are readily available. Architect will evaluate the water and sewer mains, natural gas and utility lines and all other systems which serve the Stadium Site and will take into consideration the existence of current and known future Stadium Site utilities so that the construction of the Project will attempt to minimize rerouting and removal of such utilities.

2.2 Additional Services

- 2.2.1 Other than those services set forth in this **Paragraph 2.2**, the Architect shall not be required to provide any Additional Services, except when approved and authorized in writing by the Authority in an executed Contract Revision.
- 2.2.3 The Architect is responsible to prepare the Construction Documents for the Project in compliance with all Applicable Laws and NFL Rules and Regulations. Notwithstanding the foregoing, the Architect may be compensated as an Additional Service for any changes in the Design Services necessitated by the enactment or revisions to Applicable Laws that occur after completion of the Construction Documents but before Substantial Completion, if any.

2.4 Architect's Subconsultants

- 2.4.1 Prior to entering into any professional services contract with a Subconsultant, the Architect shall consult with the Authority and shall submit the proposed contract form to the Authority for approval. The Authority reserves the right to approve any proposed Subconsultant or associated contract for any reason, such approval not to be unreasonably withheld. Copies of all executed Subconsultant contracts shall be provided to the Authority.
- 2.4.2 The Architect shall require in each Subconsultant Agreement a representation and warranty from such Subconsultant that the Subconsultant is: (i) knowledgeable, to the extent required by the Subconsultant's scope of work, of the Applicable Laws, NFL Rules and Regulations, and all codes, standards, rules and regulations applicable to a Project of this type in Minnesota, including all health, safety, fire, environmental, building and zoning codes, rules and regulations, and agrees to comply with each of the foregoing; (ii) experienced and fully qualified to perform the portion of the Design Services contemplated to be performed by the Subconsultant; and (iii) properly licensed, certified, registered and organized to perform such Design Services under Applicable Laws or any similar requirements. The Architect shall require all Subconsultants to include a similar requirement in each and every contract between said Subconsultant and any Person it may contract for any portion of the Subconsultant's services on the Project.

- 2.4.3 The Architect shall bind each and every Subconsultant to the terms of this Design Services Agreement. The Architect shall include, in addition to the representations and warranties identified in Subparagraph 2.4.2, a provision in all subcontracts issued for Design Services hereunder that requires each Subconsultant to: (i) assume toward the Authority and Architect all of the obligations and responsibilities that Architect by the terms of this Design Services Agreement assumes toward the Authority; (ii) acknowledge and agree that the services performed by the Subconsultant are for the benefit of the Authority and Team and the Authority and Team shall have the right to enforce the obligations, responsibilities and duties of the Subconsultant directly against the Subconsultant; (iii) name the Authority and Team as an intended third-party beneficiary to the duties, requirements and obligations of the Subconsultant; and (iv) acknowledge that the Subconsultant shall have no direct claim, right or cause of action against the Authority or Team by virtue of its third-party beneficiary status. The Architect shall require all Subconsultants to include a similar requirement in each and every contract between said Subconsultant and any person or party it may contract for any portion of the Subconsultant's services on the Project.
- 2.4.4 Termination of Architect Subcontracts. The Architect shall ensure that the Authority shall have the rights of termination of any of the Subconsultants or of Persons in contract with Architect's Subconsultants in accordance with the provisions of **Article 6** hereof.

ARTICLE 3

AUTHORITY RESPONSIBILITIES

- 3.1 The Authority, in consultation with the Team, shall examine documents submitted by the Architect or Construction Manager and shall promptly render decisions pertaining to such documents.
- 3.3 The Authority shall, to the extent the Authority is capable of doing so, assist the Architect and/or Construction Manager to secure public and regulatory permits and approvals. However, the inability of the Authority to provide such assistance shall not absolve the Architect and/or Construction Manager from their respective responsibility to apply for and obtain such permits and approvals. Costs normally associated with public permits and regulatory approvals shall be paid by the Authority unless specified differently elsewhere in the Contract Documents.
- 3.4 If the Authority observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Contract Documents, including the Drawings or Specifications, the Authority shall give prompt written notice thereof to the Architect and Construction Manager. Notwithstanding the foregoing, in no event shall the Authority or the Indemnitees be responsible for coordination of the Contract Documents, inspecting any portion of the Work or measuring progress of the Work. The foregoing notice or lack of notice by Authority shall not release the Architect or Construction Manager from their responsibilities under the Design Services Agreement and the Contract Documents.
- 3.7 The Authority and all Indemnitees are not, and shall in no event be, responsible or liable to any member of the Project Team for any aspect of the Design Services, inspections, quality control or design administration services, which shall be provided by the Architect under this Design Services Agreement. Likewise, the Authority and the Indemnitees are not and shall in no event be, responsible or liable for any aspect of the performance or non-performance by the Construction Manager of the Construction Manager's Work, including the construction means, methods, techniques, sequences and procedures, which shall be completed by the Construction Manager under the Construction Services Agreement. In no event shall the Authority or Indemnitees have any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Authority and Indemnitees in or under the Contract Documents.

ARTICLE 4

TIME

- 4.1 Design Services Contract Time. The Architect agrees that time is of the essence and further acknowledges the crucial aspect of timely completion of the Project. The Architect shall perform the Design Services as expeditiously as is consistent with the Standard of Care to further the orderly progress of the Work, and the Design Services shall be commenced on the date hereof. The Architect acknowledges that the anticipated Date of Substantial Completion of the Work shall be on or before the Required Completion Date. The Design Services shall be deemed complete only after satisfactory completion of all the Design Services as described in **Exhibit 1** and elsewhere in the Contract Documents.
- 4.2 Design Schedule. The Architect is responsible to complete each Phase of the Design Services in strict accordance with the critical milestone dates outlined below and in accordance with the Design Delivery Schedule:
- 4.2.1 Concept Design Documents complete on or before [insert]; and
 - 4.2.2 Schematic Design Documents (50%) complete on or before [insert]; and
 - 4.2.3 Schematic Design Documents (100%) complete on or before [insert]; and
 - 4.2.4 Design Development Documents (50%) complete on or before [insert]; and
 - 4.2.5 Design Development Documents (100%) complete on or before [insert]; and
 - 4.2.6 Construction Documents (50%) complete on or before [insert]; and
 - 4.2.7 Construction Documents (100%) complete on or before [insert]; and
 - 4.2.8 Commencement of Construction to occur on or about [insert]; and
 - 4.2.9 Anticipated Date of Substantial Completion of the Work is on or before [insert].
- 4.3 Architect Certification. Upon completion of the Construction Documents, the Architect will be responsible to provide a written certification to the Authority that the Construction Documents are complete. The Architect's certification shall establish that the Construction Documents are complete, fully coordinated and in sufficient detail, in accordance with the Standard of Care, for the Construction Manager and any applicable Trade Contractors to timely complete the Work.
- 4.5 Delay. To the extent that any delays in the completion of the Design Services as described in this **Article 4** are the responsibility of Architect and such delays cause delays in the completion of the Construction Manager's Work or the Trade Contractors' Work then Architect shall be solely responsible for the delays in completion of the Construction Manager's Work and the Trade Contractors' Work.

ARTICLE 5

PAYMENTS TO THE ARCHITECT

5.1 **Payments**

- 5.1.1 Prior to being entitled to receive payment, the Architect shall deliver to the Authority itemized Applications for Payment in such detail as may be required by the Authority to

substantiate the Architect's basis for compensation, including a schedule of values approved by the Authority. The Architect is required to submit all Applications for Payment in the form provided in **Exhibit 3** of this Design Services Agreement. **Exhibit 3** hereof provides a detailed description of the specific policies and procedures required for the Architect to submit its Application for Payment for review and approval by the Authority. The Architect's submission of its Application for Payment to the Authority shall include a certification that the Architect has made payment to its Subconsultants in accordance with all prior Applications for Payment.

- 5.1.2 Payments to the Architect shall be made within forty-five (45) days of the Authority's receipt and approval of an Application for Payment from the Architect, together with all supporting documentation and lien waivers as requested by the Authority, all in a form and substance acceptable to the Authority as set forth in **Exhibit 3**. The Authority shall notify the Architect within fifteen (15) days of receipt of the Architect's Application for Payment if the Authority will not accept the Architect's Application for Payment, or any portion thereof, and the Authority shall then provide the Architect with the basis of rejection of the Architect's Application for Payment, or any portion thereof. The Architect shall submit an Application for Payment only during the last five (5) business days of any month for services provided during the preceding month. Applications for Payment to the Authority shall include only those costs incurred to the end of that prior month for Design Services actually incurred by the Architect in the performance of the Work for the Project. The Architect's Application for Payment shall be based upon the Design Fee Schedule provided in **Exhibit 4** of this Design Services Agreement.
- 5.1.3 Notwithstanding anything to the contrary herein, the Authority shall retain the following amounts from the Architect's approved payments, in accordance with the Design Fee Schedule, until the Date of Substantial Completion and the satisfactory completion of the Design Services.
 - .1 Five Percent (5.00%) through each Phase of Design Services and all retainage accumulated through each Phase will be released at the successful completion of each Phase.
 - .2 No additional retainage on progress payments made after the completion of the Construction Documents
- 5.1.4 The Architect's Application for Payment will include a release of any and all Claims occurring to the date of the Architect's Application for Payment, establishing a waiver by the Architect of any Claims, liens or rights of lien (if and to the extent allowed by Applicable Laws) existing or that may have arisen for Design Services or labor performed, or materials furnished for the Project by the Architect or any of the Architect's Subconsultants, and further certifies that neither the Architect nor any of the Architect's Subconsultants hold or are entitled to hold any Claim, lien or rights of lien against the Project to the date of the Architect's Application for Payment.
- 5.1.5 The Architect shall be responsible for and shall include in its Design Services Fee as set forth in this Design Services Agreement, the compensation and other costs of the services of all Subconsultants retained by the Architect as may be necessary to complete the Design Services. The Authority shall have no obligation to directly make payment, or to be responsible in any way for payment, to any Subconsultant employed directly by the Architect in accordance with the Work. The Architect shall pay each of the Subconsultants within ten (10) days (or such shorter period as required by Applicable Law) of the Architect's receipt of payment from the Authority for undisputed Design Services provided by each of the Subconsultants. The Architect shall pay interest of 1-1/2 percent per month (or any part of a month) to any of the Subconsultants on an undisputed amount not paid on time to the Architect's Subconsultant. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the

Architect shall pay the actual penalty due to the Subconsultant in accordance with Minnesota Statutes. Upon payment to any Subconsultant, the Architect will obtain from such Subconsultant a release and waiver by the Subconsultant of any claims, liens or rights of lien existing or that may have arisen for Design Services or labor performed, or materials furnished for the Project by the Subconsultant occurring to the date of the Architect's payment. 5.1.6 The Authority shall pay interest of 1-1/2 percent per month (or any part of a month) to the Architect on an undisputed amount not paid to the Architect within forty-five (45) days of approval by the Authority in accordance with **Subparagraph 5.1.2** hereof. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Authority shall pay the actual interest penalty due to the Architect in accordance with Minnesota Statutes.

5.1.7 Final payment constituting the entire unpaid balance due shall be paid by the Authority to the Architect, including retainage, upon the Authority's receipt and approval of a Final Application for Payment from the Architect. The making of final payment shall constitute a waiver of any and all Claims by the Architect against the Authority or any of the Indemnitees.

5.2 Basis of Compensation

5.2.1 Compensation for the Design Services shall be paid to the Architect by the Authority as set forth below:

- .1 For Design Services described in **Article 2** and **Exhibit 1** attached hereto, the Architect shall be paid a fixed "**Design Services Fee**" in the amount of [insert]; and
- .2 Direct Personnel Expenses ("**DPE**") for Design Services of the Architect shall be included within the Design Services Fee described above.
- .3 The Design Services Fee includes any and all costs for taxes.
- .4 The Design Services Fee shall be allocated between the Design Phases and phases of the Work as described in the Design Fee Schedule included in **Exhibit 4** hereof.

5.2.2 Reimbursable Expenses are included in the Design Services Fee as described above.

Potential Reimbursable Expenses that are not included in the Design Services Fee are listed on **Exhibit 4**.

5.2.3 In regard to Reimbursable Expenses associated with Additional Services, no unreasonable Reimbursable Expenses will be approved. The following is a summary of possible Reimbursable Expenses that may be associated with Additional Services:

- .1 Expenses of printing, reproductions, postage and charges for delivery of the final Construction Documents, if requested by Authority; and
- .2 Expenses of transportation in connection with the Architect's personnel commuting to the Project location (distances greater than 100 miles); and
- .3 Costs of physical models developed specifically for the Project for purposes of marketing or promotion of the Project; and
- .4 Other reasonable expenses as may be agreed to from time to time in writing by the Authority.

- .5 The Architect shall provide evidence satisfactory to the Authority to substantiate all claimed Reimbursable Expenses.
- 5.3 Design Fee Inclusive. The Authority and Architect acknowledge and agree that the Design Services Fee is intended to include all costs, fees, overhead and profit for completion of the Design Services in accordance with the requirements of this Design Services Agreement.
- 5.4 Design Fee Adjustment. To the extent the Design Services Contract Time is changed materially for reasons that are the responsibility of the Authority, the amount of the Design Services Fee shall be equitably adjusted pursuant to this Paragraph. For purposes hereof, it is understood that no adjustment in the Design Services Contract Time will be made for reasons of failure by the Architect to complete the Design Services in accordance with the requirements of the Design Services Agreement.

ARTICLE 6

TERMINATION AND SUSPENSION

- 6.1 Termination for Convenience. The Authority may, upon seven (7) days' written notice, terminate this Design Services Agreement for its convenience and without cause, in which case the Architect shall be entitled to that compensation earned under Article 4 of this Design Services Agreement for (i) Design Services timely and properly performed through the date of termination, (ii) approved Additional Services performed through the date of termination, and (iii) Reimbursable Expenses incurred through the date of termination. Payments for such Design Services, Additional Services and Reimbursable Expenses shall be made in accordance with the provisions of Article 5 above following the Authority's receipt of all Design Document Works pursuant to Paragraph 1.3 above. In the event of such termination, Architect will not be entitled to any lost profits on the Project (or otherwise), consequential damages (or other damages), termination expenses, costs or any other compensation except as specifically provided in this Paragraph 6.1.
- 6.2 Suspension for Convenience. The Authority may, upon seven (7) days' written notice, suspend the Design Services under this Design Services Agreement, and the Architect agrees to resume the Design Services in accordance with the terms of this Design Services Agreement upon receipt of the Authority's subsequent written notice to resume. If any such suspension shall exceed one hundred twenty (120) consecutive days, the Authority shall pay to the Architect reasonable compensation for the Architect's actual, increased costs as a result of such suspension and the Architect shall not be entitled to any lost profits on the Project (or otherwise), consequential damages (or other damages), costs, expenses or any other compensation of any kind.
- 6.3 Termination for Cause. This Design Services Agreement may be terminated by either Party upon not less than thirty (30) days' prior written notice (i) should the other Party fail to make an undisputed payment under this Design Services Agreement, and such undisputed payment is not made prior to the expiry of such thirty (30) day notice period, or (ii) should the other Party fail substantially to perform its material obligations in conformance with the terms of this Design Services Agreement through no fault of the Party initiating the termination and the other Party shall fail to cure such default prior to expiry of such thirty (30) day notice period. Any written notice of default shall state in reasonable detail the nature of the alleged default.
- 6.4 Architect Suspension for Non-Payment. The Architect may suspend performance of its Design Services under this Agreement upon not less than thirty (30) Business Days' prior written notice to the Authority in the event Authority fails to make an undisputed payment under this Design Services Agreement that is properly due and payable to the Architect unless such undisputed payments are made prior to expiry of such notice period.

ARTICLE 7

CHANGES IN THE WORK

7.1 Design Services

- 7.1.1 A Contract Revision related to the Design Services is a written order signed by the Authority and Architect, and issued after execution of this Design Services Agreement, authorizing a change in the Design Services. Costs to the Authority resulting from a change in the Design Services shall be determined in writing between the Authority and the Architect before issuance of any Contract Revision.
- 7.1.2 Notwithstanding **Subparagraph 7.1.1**, the Architect shall perform a requested change in Design Services without a Contract Revision if so directed even if the costs resulting from such change in Design Services cannot be agreed upon pending agreement on final terms of such Contract Revision

7.2 Regulatory Changes

- 7.2.1 In accordance with **Paragraph 2.2**, the Architect shall be compensated for changes in the Design Services necessitated by the enactment or revisions to Applicable Laws, which may be enacted from time to time after the completion of the Construction Documents but before Substantial Completion, but only to the extent that such changes materially increase the time and/or resources of the Architect as required to complete the Design Services. In such instances, if any, the Architect shall provide for Authority's review and approval, in writing, the justification for such Additional Services. It is understood and agreed by the Authority and Architect, that the Architect shall be responsible to include provisions for all Applicable Laws in effect at the time when a Design Document is issued and in the orderly and sequential progression of the Design Documents prepared by the Architect for the Project and to anticipate and plan for (to the extent possible) regulatory changes so as to avoid the impact of such changes described in this **Subparagraph 7.2.1**. Architect shall notify the Authority of any change in Applicable Laws before issuance of the Construction Documents.

ARTICLE 8

CORRECTION OF DESIGN DOCUMENTS

- 8.1 Correction of Errors. The Architect shall be responsible to promptly make corrections to the Design Documents when any Design Document is found to contain any errors or omissions by the Architect, Architect's employees or Subconsultants. All costs associated with corrections by Architect of the Design Documents and damages or delays associated with the Work or any work of the Project Team found to have been caused by such errors and omissions of the Architect, Architect's employees or Subconsultants, shall be borne by the Architect.

ARTICLE 9

INSURANCE

9.1 Architect's Liability Insurance

- 9.1.1 Architect shall for the protection and benefit of the Authority, the Additional Insured Parties and the Architect, procure and maintain in full force and effect, at all times during the performance of the Architect's Design Services until final acceptance of the Architect's Design Services or for such duration as is otherwise required in this Design Services

Agreement, with companies authorized to do business in Minnesota, which have a rating of not less than A:X in the most current edition of the Best's Key Rating Guide, or as otherwise acceptable to Authority, the insurance coverage and policies outlined herein for coverage limits at not less than the prescribed minimum liability limits set forth in this **Paragraph 9.1.**

9.1.2 Architect shall procure and maintain the following insurance coverages pursuant to this **Paragraph 9.1:**

1. **Workers' Compensation and Employer's Liability Insurance:**
 - A. Workers' Compensation including Occupational Disease Insurance and Borrowed Servants and Alternate Employees endorsements in accordance with Applicable Law, and including Temporary and Leased Workers.
 - B. Employer's Liability Insurance with minimum limits of \$2,000,000.
2. **General Liability Insurance:**
 - A. Commercial General Liability – Limits
 - a. General Aggregate Limit - Per Project - \$5,000,000
(Other than Products Completed Operations)
 - b. Products/Completed Operations Aggregate - \$5,000,000
 - c. Each Occurrence Limit - \$5,000,000
 - d. Severability of interest
 - e. Such policy shall not exclude coverage for Explosion, Collapse and Underground ("XC&U") Hazards
 - f. Defense in addition to limits of liability
 - g. Broad Form Property Damage coverage
 - h. Operations within 50 feet of railroad
 - i. Definition of Bodily Injury to include Mental Injury and Mental Anguish
 - j. Mobile Equipment coverage
 - B. Commercial General Liability Coverage, on ISO form CG 00 01 04 or its equivalent, shall include:
 - a. Premises – Operations Liability
 - b. Occurrence Bodily Injury and Property Damage Liability
 - c. Independent Construction Managers Liability
 - d. Completed Operations (to be maintained for 12 years past project completion)
 - e. Products Liability
 - f. Blanket Contractual, including coverage for Architect's obligations
 - g. Personal Injury Liability with Employment Exclusion deleted
 - h. Libel, slander, false arrest and invasion of privacy
 - i. Independent contractors
3. **Automobile Liability,** including all Owned, Non-owned, and Hired Vehicles with a \$2,000,000 Combined Single Limit.
4. **Excess Liability** with "drop down" feature and "pay on behalf of" wording, including dedicated limits for the Project of \$10,000,000 aggregate limit. Coverage must be at least Follow Form of the underlying General Liability, Auto Liability, Workers Compensation and Employers Liability.
5. **Valuable papers insurance** insuring all plans, designs, drawings, specifications and documents, including all electronic files, produced or used by Architect or any Subconsultants, as applicable and any of Authority's documents in the care, custody or control of Architect or any Subconsultant in the amount of at least \$1,000,000.
6. **Professional Liability (Errors & Omissions-Architect)**
 - A. **Architect's Policy.** Architect shall purchase professional liability errors and omissions insurance in accordance with the following: Professional Liability Errors and Omissions Insurance with limits of not less than Ten Million Dollars (\$10,000,000.00) including coverage

for Architect's indemnity obligations under **Paragraph 11.1**. If an excess policy is used to reach such limits, the excess policy shall be dedicated to the Project by endorsement to the Architect's practice policy, and the excess policy shall be endorsed to be primary and non-contributory. Architect shall provide proof of such limits and the dedicated excess policy limit endorsement, if any, to the Authority prior to the commencement of the Design Services. Architect shall maintain this coverage in effect during the term of this Design Services Agreement, and for a period of twelve (12) years following final completion of the Project. Architect shall provide a written monthly report to Authority and Team of any and all claims made against this policy, or other material events which would affect coverage under such policy, during the period in which this policy is required to be maintained pursuant to this Agreement. Any retroactive date or prior acts exclusion shall pre-date the date of this Agreement and the date that any services were provided in connection with this Project. Architect shall procure such additional endorsements as the Authority may reasonably require.

B. Project Specific Policy. The Authority reserves the right to procure a project specific professional liability policy for the Project. Within five (5) days after delivery of a request from the Authority, Architect agrees to provide the following information respecting its professional liability insurance: (1) the policy renewal date; (2) the current policy limits; (3) the current deductible/self-insured retention; (4) the current underwriter; (5) information from Architect's insurance agent that the issuer of the project specific professional liability policy may need to underwrite and provide said policy; (6) the cost of its professional liability insurance as a percent of revenue; (7) the affirmation that Architect will complete a project errors and omissions application in a timely fashion; and (8) any other information required in connection with the procurement of a project specific professional liability policy.

7. **Subconsultants' Insurance**

The Subconsultants shall comply with the insurance requirements set forth in Subsections 1-6 of this Subparagraph 9.1.2; provided that each Subconsultant's professional liability policy shall have limits not less than the limits identified on the submitted schedule attached as **Exhibit 2**. The Architect agrees that it will promptly make good faith efforts to identify qualified Subconsultants who can comply with the insurance provisions required of Architect pursuant to this Agreement. Architect agrees that it will contractually obligate its Subconsultants to promptly advise the Authority and Team of any changes or lapses of the requisite insurance coverages and Architect agrees to promptly advise the Authority and Team of same. The Architect assumes all responsibility for monitoring Subconsultant insurance certificates, endorsements and policies for compliance with the insurance provisions of this Agreement.

- 9.1.3 The costs of all insurance required under this **Paragraph 9.1**, including any deductibles, shall be included in the Architect's Fee.
- 9.1.4 All such insurance shall be written on an occurrence basis, except Professional Liability Coverage, which shall be written on a claims-made basis.
- 9.1.5 The Architect shall deliver to the Authority, within ten (10) days of the date of the Design Services Agreement and prior to personnel being 1) utilized in connection with the Project or the Design Services or 2) brought onto the Project site, certified copies of all insurance policies procured by the Architect under or pursuant to this **Paragraph 9.1** or, with consent of the Authority, other forms of documentation evidencing the required coverages with limits not less than those specified in this **Paragraph 9.1**. The Architect shall furnish or cause each of Architect's Subconsultants to furnish to the Authority certificates of the insurance policies required to be maintained by it prior to the commencement of its Services on the Project. The acceptance by the Authority of such policies or other documentation does not constitute approval or agreement by the Authority that the insurance requirements have been met or that the insurance policies are in compliance with the requirements.

- 9.1.6 The Authority and the Additional Insured Parties shall be named as additional insureds on Architect's and each Subconsultant's Commercial General Liability Policy, Commercial Automobile Policy and Umbrella/Excess Liability Policy obtained under or pursuant to this **Paragraph 9.1**. Each policy of insurance maintained by the Architect or Subconsultants shall, to the extent applicable to the particular coverage (a) provide that such insurance is primary insurance in regards to all other policies of insurance providing coverage to the Authority or the Additional Insured Parties; (b) provide that any other insurance maintained by the Authority or the Additional Insured Parties is excess and non-contributing insurance to that required herein; and (c) contain a "Cross-Liability" or "Severability of Interest" provision.
- 9.1.7 All policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days' prior written notice shall be given to the Authority and the Additional Insured Parties in the event of material alteration, cancellation, non-renewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance.
- 9.1.8 In no event shall any failure of the Authority to receive certified copies of policies and Certificates of Insurance required under this **Paragraph 9.1** or to demand receipt of such certified copies or certificates prior to the Architect commencing the Architect's Services be construed as a waiver by the Authority or the Additional Insured Parties of the Architect's obligations to obtain insurance pursuant to this **Paragraph 9.1**. The obligation to procure and maintain any insurance required by this **Paragraph 9.1** is a separate responsibility of the Architect and independent of the duty to furnish a certified copy or certificate of such insurance policies.
- 9.1.9 If the Architect fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this **Paragraph 9.1**, Authority may, but shall not be obligated to, upon five (5) days' written notice to the Architect, purchase such insurance on behalf of the Architect and shall be entitled to be reimbursed by the Architect upon demand and may offset any costs incurred in procuring such insurance against the Design Services Fee due to the Architect.
- 9.1.10 When any required insurance, due to the attainment of a normal expiration date or renewal date shall expire, the Architect shall supply the Authority, thirty (30) days prior to expiration, with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required in this **Paragraph 9.1**. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Architect shall also furnish the Authority with a certified copy of the renewal or replacement policy unless the Authority, provide the Architect with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Authority and written by carriers acceptable to the Authority.
- 9.1.11 Any aggregate limit under the Architect's Commercial General Liability and Excess Liability insurance shall, by endorsement, apply to this Project separately.
- 9.1.12 The Architect shall cause each Subconsultant to (1) procure insurance reasonably satisfactory to the Authority and (2) name the Architect, Authority, and the Additional Insureds as additional insureds under the Subconsultant's Commercial General Liability, Commercial Automobile and Umbrella/Excess Liability policies. The additional insured endorsement included on the Subconsultant's aforementioned policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the Subconsultant. If the Additional Insureds have other

insurance which is applicable to the Project, such other insurance shall be, for the purposes hereof, on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance

- 9.1.13 Architect shall assist and cooperate with Authority and each Additional Insured Party, as applicable, in every manner possible in connection with the adjustment of all insurance claims arising out of the performance of this Design Services Agreement and shall cooperate with the insurance carrier or carriers in litigated claims and demands, whether resulting in litigation, which the insurance carrier or carriers are called upon to adjust or resist. Architect shall assist, cooperate, participate and comply with all reasonable requirements and recommendations of the insurers and insurance brokers issuing or arranging for issuance of policies required herein, and in all areas of safety, insurance program administration, claim reporting and investigating and audit procedures.
- 9.1.14 All policies, except for the Architect's Professional Liability Policy, shall be endorsed to provide a waiver of subrogation in favor of the Authority and the Indemnitees.
- 9.1.15 Insurance procured or maintained by Architect shall not reduce or limit Architect's contractual obligations or liabilities to Authority or any Additional insured for claims or suit which arise out of or are incident to the Architect's or Subconsultants' performance, acts or omissions.
- 9.1.16 The following parties (the "**Additional Insured Parties**"), their respective affiliates, directors, officers, direct and indirect affiliates, partners, members, owners, agents, employees, successors and assigns and other parties deemed appropriate from time to time by the Authority or Team, shall be named as additional insureds under the Architect's insurance, except the Architect's professional liability insurance and the Architect's workers' compensation insurance, including:
- .1 The Authority
 - .2 The Team
 - .3 The Construction Manager
 - .4 The Tegra Group, Inc.
 - .5 Other Persons as required from time to time by the Authority
- 9.1.17 The provisions of this **Paragraph 9.1** shall survive the completion of the Design Services or any termination of this Design Services Agreement.

9.2 Authority's Insurance.

- 9.2.1 The Authority may purchase and maintain insurance as deemed appropriate by the Authority, in its sole discretion, for the Project.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Dispute Resolution

- 10.1.1 Claims, disputes and other matters in question between the Parties to this Design Services Agreement or related to the Project or the Work and arising out of or relating to this Design Services Agreement, the Project or the Work shall be resolved in accordance with these dispute resolution procedures.

- 10.1.2 The Architect shall not in any way delay the progress of the Design Services or the Project, including the timely delivery of Drawings, Specifications and other Construction Documents as a result of Claims or disputes that may arise on the Project.
- 10.1.3 This **Article 10** shall survive completion of the Work or any termination, suspension or expiration of this Design Services Agreement. This **Subparagraph 10.1.3** shall not be deemed a waiver of the applicable statute of limitations or statute of repose under Applicable Laws.

10.2 Definition of Claim and Step Negotiations

- 10.2.1 Architect and Authority agree to cooperate in resolving any claims, controversies, or disputes (collectively, "Claim") that may arise out of or relate to the Design Services Agreement, the breach thereof, or the Work. Architect shall continue to diligently provide its services pending final resolution or determination thereof, unless requested to suspend the Design Services pursuant to **Paragraph 6.2** of this Design Services Agreement, provided that the payments continue to be made to Architect as provided herein for all Design Services or Additional Services not subject to a Claim.
- 10.2.2 The parties expressly agree and acknowledge that Design Services and Additional Services, as the case may be, will not be stopped or slowed in any way during the pendency of any Claim; provided that all monies earned by Architect for Design Services or Additional Services not in dispute are timely paid pursuant to the Design Services Agreement.
- 10.2.3 Architect and the Authority will first attempt to resolve Claims at the field level through discussions. If a Claim cannot be resolved through such discussions, then Architect's Principal and the Authority's Board Chair and/or Executive Director, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such Claim. Prior to any such meetings between the Parties' principals, the Parties will exchange relevant information that will assist the Parties in resolving their Claim. If after meeting, the Architect's Principal and the Authority's Board Chair and/or Executive Director determine that the Claim cannot be resolved on terms satisfactory to both Parties, the Parties shall submit the Claim to mediation as set forth in **Exhibit 7**, the General Conditions. If a Party intends to be accompanied at a meeting by an attorney, the other Party shall be given at least three (3) Business Days' notice of such intention and may also be accompanied by an attorney.
- 10.2.4 All Claims not resolved pursuant to this Paragraph shall be resolved pursuant to Paragraphs 6.2 to 6.4 of the General Conditions.

ARTICLE 11

INDEMNIFICATION

- 11.1 **Architect's Indemnification Obligations.** Architect hereby agrees, to the fullest extent permitted by law (including Minn. Stat. § 337.02), to indemnify and hold harmless the Authority and all Indemnitees from and against claims, damages (including, but not limited to, attorneys' fees incurred by the Indemnitees in their defense and to enforce this Paragraph), liabilities, losses and expenses arising out of or resulting from performance of the Design Services, to the extent caused by the (i) negligent acts, willful misconduct, errors or omissions, or wrongful acts or omissions of the Architect, Architect's employees, Subconsultants or anyone for whom the Architect is legally liable in the performance of

the Design Services under the Design Services Agreement, whether arising before or after completion of the Design Services caused by, arising out of, resulting from or occurring in connection with the performance of the Design Services or any activity associated with the Design Services, or (ii) breach of the Design Services Agreement by the Architect. Further, if an Indemnitee's potential liability for a claim is based on an alleged act, error or omission of Architect that is covered by any insurance other than Architect's professional liability insurance, then Architect shall defend the Indemnitee with counsel of the Indemnitee's choice. In the case of claims by any employee of the Architect, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this **Paragraph 11.1** shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Architect under workers' compensation acts or disability benefit. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this **Paragraph 11.1**. Consistent with **Subparagraph 9.1.15** of this Agreement, the Architect acknowledges and agrees the indemnity obligations of the Architect hereunder are not limited by the limits of insurance coverage chosen to be carried by the Architect.

- 11.2 The terms and provisions of this **Article 11** shall survive the expiration, suspension or termination of this Design Services Agreement.

ARTICLE 12

OTHER PROVISIONS

12.1 Nondiscrimination

The Architect shall not discriminate against any of its Subconsultants, employees or applicants for employment or subcontracting because of race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age. This provision shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and subcontracting. The Architect shall include the provisions of this **Paragraph 12.1** in all contracts issued in connection with the Design Services hereunder, as modified in such contracts to reflect that the Subconsultants and other parties in such contracts are subject to the same nondiscrimination, equal opportunity and affirmative action obligations to which the Architect is subject under this Design Services Agreement. The Architect shall require all of the foregoing Subconsultants and other Persons in contract with the Architect to include the same, modified nondiscrimination, equal opportunity and affirmative action obligation provisions in each and every contract that the Subconsultants and other Persons enter into in connection with the Design Services hereunder.

12.2 Successors and Assigns

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

12.3 Assignment

The Architect shall not assign this Design Services Agreement, in whole or in part, or its rights or obligations under this Design Services Agreement, in whole or in part, and any such assignment shall be void as a matter of law. The Architect acknowledges and agrees that the Team is a third party beneficiary under this Design Services Agreement, and that the Authority may assign all or

any portion of this Design Services Agreement or its rights hereunder to the Team. The Architect acknowledges and agrees that the Authority may assign all or any portion of this Design Services Agreement or its rights hereunder to the Construction Manager or such other Person as the Authority, in its sole discretion, sees fit. Any Person which shall succeed to all or a portion of this Design Services Agreement or the rights of the Authority hereunder shall be entitled to enforce all or such portion of this Design Services Agreement or its rights hereunder. In the event of an assignment, Architect shall look solely to the assignee, after the date of the assignment, for performance of the Authority's duties so assigned including without limitation the duty to make payments to Architect.

12.4 Third Party Rights

The Authority and the Architect hereby expressly acknowledge and agree that each of the Indemnitees is an intended third party beneficiary of the specific provisions of this Design Services Agreement where the Indemnitees are mentioned. Nothing contained herein shall be deemed to give any third party, other than the Indemnitees, any claim or right of action against Authority or Architect that does not otherwise exist without regard to this Agreement.

12.5 Governing Law, Venue and Jurisdiction

This Design Services Agreement shall be construed in accordance with the laws of the State of Minnesota. Each Party to this Design Services Agreement (i) agrees that except for those Claims or disputes which are subject to the dispute resolution requirements set forth in **Article 10** hereof, any suit, action or other legal proceeding arising out of this Design Services Agreement or any related agreements or any of the transactions contemplated hereby or thereby shall be brought in the courts of the State of Minnesota, Fourth Judicial District, Hennepin County District Court; (ii) consents to the jurisdiction of such court in any such suit, action or proceeding; and (ii) waives any objection which it may have to the venue of any such suit, action or proceeding in such court.

12.6 Hiring and Employment Principles

The Architect shall be required to comply with the requirements of the Hiring and Employment Principles attached hereto as **Exhibit 6**.

12.7 Project Staffing

All staff used by the Architect in the performance of the Design Services shall be qualified by training and experience to perform their assigned tasks. The Architect shall submit, for the Authority's approval, a staffing proposal for the Project, complete with job description, names and previous experience of all design personnel. The Architect shall provide staffing for the Project at the minimum levels not less than those set forth in **Exhibit 5** attached hereto. The Key Personnel of Architect listed on **Exhibit 5** shall not be removed from the Project by Architect (nor their responsibilities on the Project reduced) without the prior approval of the Authority, which approval may be granted or withheld in the Authority's sole and absolute discretion. In the event any of the Key Personnel named on **Exhibit 5**, for reasons beyond the control of Architect, either cease to be employed by Architect or are otherwise unable to perform their duties with respect to the Project, comparably qualified replacements for such personnel shall be offered by Architect and such replacements shall be subject to approval by the Authority in its sole and absolute discretion. The Architect shall replace any of the Key Personnel or other individuals employed by the Architect or Architect's Subconsultants who are assigned to the Project upon request by the Authority that such personnel be replaced.

12.8 No Agency

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

12.9 Confidentiality

The Architect shall keep strictly confidential all Confidential Information concerning and relating to the Project, in accordance with the requirements set forth in **Paragraph 1.5** of the General Conditions. The Architect, its officers, agents, owners, partners, employees, volunteers and Subconsultants shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13 (the "MGDPA") and all other Applicable Laws relating to data privacy or confidentiality, and as any of the same may be amended. The Architect agrees to defend, indemnify and hold harmless the Indemnitees from and against any claims resulting from the unlawful disclosure and/or use of such protected data by the Architect or the officers, agents, owners, partners, employees, volunteers, assignees or Subconsultants of the Architect, or other noncompliance with the requirements of this **Paragraph 12.9**. The Architect agrees to promptly notify the Authority and Team if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA. The terms of this **Paragraph 12.9** shall survive the cancellation, suspension or termination of this Design Services Agreement

12.10 Authority Immunity and Limitations on Liability

Immunity. Nothing contained in this Design Services Agreement, including any insurance required under this Design Services Agreement or otherwise carried by the Authority or Team, shall in any way affect or impair the Authority's immunity or the immunity of the Authority's employees or Consultants or independent contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity or otherwise. Nothing contained in this Design Services Agreement, including but not limited to any insurance required under this Design Services Agreement or otherwise carried by the Authority or Team shall in any way affect or impair the limitations on the Authority's liability or the liability of the Authority's employees or Consultants or independent contractors, set forth in Minnesota Statutes Chapter 466. By entering into this Design Services Agreement, the Authority does not waive any rights, protections or limitations provided for the Authority or its employees or consultants or independent contractors under the various rules of governmental immunity, Minnesota Statutes Chapter 466 or other Applicable Laws.

Governmental Entity and Team Exculpatory Provision. The Architect acknowledges and agrees that this Design Services Agreement imposes no contractual obligations upon the State of Minnesota, County of Hennepin, or City of Minneapolis (individually, a "Governmental Body" and collectively, the "Governmental Bodies"), and will do so only if a Governmental Body expressly assumes in writing the obligations of the Authority under this Design Services Agreement.

If a default or breach under this Design Services Agreement occurs, of any kind or nature whatsoever, the Architect agrees that it will not look to any of the Governmental Bodies, and will look solely to the Authority (or its successors or assigns), at the time of the default or breach for remedy or relief. No member, officer, employee, agent, independent contractor, or consultant of the Governmental Bodies will be liable to the Architect, or any successor-in-interest to Architect, in the event of any such default or breach.

12.11 Authority

Architect represents and warrants that it has full power and authority to enter into this Design Service Agreement and the Persons signing on behalf of Architect are authorized to do so.

12.12 Counterparts

This Design Services Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.13 Entire Agreement

This Design Services Agreement, along with the General Conditions and Contract Documents, represent the entire agreement between the Authority and Architect and supersede any prior negotiations, representations or agreements. This Design Services Agreement may be amended only by written instrument signed and delivered by both the Authority and Architect.

[SIGNATURE PAGE(S) TO FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

MINNESOTA SPORTS FACILITIES AUTHORITY

By:

Title:

By:

Title:

[ARCHITECT NAME]

By:

Title:

EXHIBIT LIST

- Exhibit 1 Description of Designated Services for Architecture/Engineering Services

- Exhibit 2 Subconsultants' Professional Liability Insurance

- Exhibit 3 Architect's Application for Payment

- Exhibit 4 Architect's Design Services Fee Schedule

- Exhibit 5 Project Staffing Chart

- Exhibit 6 Hiring and Employment Principles

- Exhibit 7 General Conditions

EXHIBIT 1

DESCRIPTION OF DESIGNATED SERVICES for ARCHITECTURE / ENGINEERING SERVICES

DESIGNATED SERVICES

The Architect shall be responsible to complete, manage and coordinate the completion of all actions, information, documents and/or services related to the design of the Project as outlined in this **Exhibit 1** (the “Scope of Services”).

The Architect acknowledges and agrees that the purpose and intent of the Design Services Agreement and the Scope of Services is to establish a comprehensive and complete description of the Work to be completed by the Architect.

The Scope of Services are described below:

DESCRIPTIONS OF DESIGNATED SERVICES

1. Architectural and engineering design of the secured perimeter with K12 rating on the south, east, and west sides of the Stadium.
2. Project administration, including review of Submittals from the eventual Construction Manager and other duties specifically provided for elsewhere in the Design Services Agreement.
 - a. The Architect is to conduct on-site observations and provide reports as provided for in the General Provisions. Reports are to be provided to both the Authority and The Tegra Group, Inc.
3. Responsibility for the architectural layout, structural footings and fence design, landscaping, and civil engineering as follows:
 - a. Site Master Planning for Phase I actual and future Phase potential (concept only).
 - b. Conceptual visual images as part of the concept package.
 - c. Architectural Design for Phase I of the secured perimeter.
 - d. Construction Administration and on-site representation.
 - e. Landscape Architecture Design for Phase I only.
 - f. ADA design.
 - g. Code compliance.
 - h. Traffic and Pedestrian Engineering for Phase I only.
 - i. Wayfinding signage.
 - j. Additional services as requested and documented with fees as Owner directs.

4. Work with Owner's representative and eventual Construction Manager to price and secure materials for the K12 rated materials and other materials.
5. Provide assistance with regard to any necessary zoning or other Governmental Approvals, including identifying necessary approvals and permits (including Variances), developing an approach, preparing and filing applications, preparing presentation materials, and attending meetings and hearings. Coordinate such work with Owner and Owner's advisors and representatives.
6. Owner may add additional services as contemplated by Paragraph 2.2 of the Design Service Agreement.

EXHIBIT 2

SUBCONSULTANTS' PROFESSIONAL LIABILITY INSURANCE LIMITS

Consultant/Discipline	Per Claim	Annual Aggregate
Associate Architect	\$ 5,000,000	\$ 7,000,000
Accessibility	\$ 1,000,000	\$ 2,000,000
Civil Engineering	\$ 2,000,000	\$ 4,000,000
Code	\$ 1,000,000	\$ 2,000,000
Cost Estimating	\$ 1,000,000	\$ 2,000,000
Graphics	\$ 1,000,000	\$ 2,000,000
Landscape Design	\$ 2,000,000	\$ 4,000,000
Lighting Design	\$ 1,000,000	\$ 2,000,000
Materials Management	\$ 1,000,000	\$ 2,000,000
Security	\$ 1,000,000	\$ 2,000,000
Structural Engineering	\$ 5,000,000	\$ 7,000,000
Sustainability	\$ 2,000,000	\$ 4,000,000
Traffic	\$ 2,000,000	\$ 4,000,000
Urban Planning	\$ 1,000,000	\$ 2,000,000
Waste Management	\$ 2,000,000	\$ 4,000,000
Wind Engineering	\$ 1,000,000	\$ 2,000,000

EXHIBIT 3

ARCHITECT'S APPLICATION FOR PAYMENT

The Architect's Application for Payment is included herein as Exhibit 3:

EXHIBIT 3 - ARCHITECT'S APPLICATION FOR PAYMENT

BILLING APPLICATION FOR PROFESSIONAL SERVICES							
TO OWNERS:	PROJECT:			APPLICATION NO.: _____			
Minnesota Sports Facilities Authority				DATE: _____			
1005 4th Street South				PERIOD FROM: _____			
Minneapolis, MN 55415				PERIOD TO: _____			
FROM CONTRACTOR:							
Name:							
Address:							
	Contract Amount	Percent Complete	Prior Billed	Total Billed	Remaining	Remaining Percentage	Current Billed
Breakout Allocation of Basic Services Fee							
Architectural Design							
Landscape Design							
CA and On-site Representation							
Structural Engineering							
Electrical Engineering/Lighting							
Code Compliance							
TOTAL BASIC SERVICES (Original Proposal)	\$ -		\$ -				
Reimbursables							
b. Breakout Allocation per Design Phase							
1 Schematic Design							
2 Design Development							
3 Construction Documents							
4 Construction Admin							
TOTAL BASIC SERVICES	0.00%						

SIGNATURE _____

DATE _____

EXHIBIT 4

ARCHITECT'S DESIGN SERVICES FEE SCHEDULE

Design Services Fee and Reimbursable Expenses by Phase

Concept & Programming	\$
Design Development	\$
Construction Documents	\$
Construction Administration	\$
Post Construction	\$
Total Design Services Fee and Reimbursable Expenses:	\$

The Reimbursable Expenses are included within the Design Services Fee by phase of service.

The following expenses are not part of the Reimbursable Expenses included within the Design Services Fee: (a) physical models if requested by the Team or Authority; (b) license fees payable to third parties for a web based project management system if required by the Team or Authority; (c) printing of more than a reasonable number of sets of design documents; (d) on-site copy machine during the Construction Phase; (e) on-site office space for Architect's on-site personnel during the Construction Phase, with job site utilities, including telephone and internet connection.

EXHIBIT 5

PROJECT STAFFING CHART

The following Project Staffing Chart for the Architect is included herein as Exhibit 5:

[To be provided by the Architect]

EXHIBIT 6

Hiring and Employment Principles

The Hiring and Employment Principles are included herein as Exhibit 6:

The Authority has developed an Equity Plan, which is available on its website. The Architect shall develop and implement a specific plan to reach targeted goals for MBE and WBE participation on this project, and for employing women and members of minority communities to comply with the Authority's Equity Plan. Among other things, the Architect shall take appropriate measures to consider MBE and WBE as potential Subconsultants. If requested by the Authority, the Architect shall provide a written report regarding its efforts to comply with the requirements of this Exhibit and the results of those efforts.

EXHIBIT 7

GENERAL CONDITIONS

The General Conditions are included herein as Exhibit 7:

ARTICLE 1
GENERAL PROVISIONS

1.1 DEFINITIONS

1.1.1 Definitions included in the Design Services Agreement are included in these General Conditions as **Appendix A**.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Design Services by the Architect and, if applicable, any Consultant, and the Work by the Construction Manager and, if applicable, any Trade Contractor. Execution of the Design Services Agreement by the Architect is an absolute representation that it understands the intent stated herein and that the Contract Documents, when complete, will represent a full and complete definition of the Work and the Design Services in order to meet the objective of the Authority and Team of including all items necessary for the proper execution and completion of the Design Services by the Architect and the Work by the Construction Manager in accordance with the Guaranteed Maximum Price and the Contract Time.

1.2.2 The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Architect and the Construction Manager shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them by the Authority as being necessary to produce the intended results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and Applicable Laws and NFL Rules and Regulations, the Architect and Construction Manager shall (1) provide the better quality or greater quantity of Design Services and the Construction Manager's Work or (2) comply with the more stringent requirement; either or both in accordance with the Authority's reasonable interpretation. In general, the following rules of interpretation shall apply:

- .1** On the Drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.
- .2** Before ordering any materials or doing any Work, the Construction Manager shall verify all existing conditions and measurements and shall be responsible for the correctness of such measurements. Any difference that may be found shall be submitted to the Architect for interpretation before proceeding with the Construction Manager's Work.
- .3** If a minor change in the Work is found necessary due to actual field conditions, the Construction Manager shall so advise the Architect who shall issue detailed drawings of such before making the change.

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

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

1.3 CAPITALIZATION

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

1.4 CONSTRUCTION OF LANGUAGE

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

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

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

1.4.4 Knowledge. The terms “knowledge,” “recognize” and “discover,” their respective derivatives and similar terms in the Contract Documents, as used in reference to the Architect, shall be interpreted to mean that which the Architect knows, recognizes and discovers. The expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted by the Authority to mean reasonably inferable by the Authority or an architect or construction manager familiar with the Project and exercising the care, skill and diligence required of the Construction Manager or Architect by the Contract Documents.

1.4.5 Persistently. The phrase “persistently fails” and other similar expressions, as used in reference to the Construction Manager or the Architect, shall be interpreted to mean any combination of acts and omissions, which causes the Authority reasonably to conclude that (1) the Construction Manager will not complete the Construction Manager’s Work within the Contract Time, for the GMP or in substantial compliance with the requirements of the Contract Documents or (2) the Architect will not complete the Design Services in substantial compliance with the requirements of the Contract Documents.

1.5 CONFIDENTIALITY

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

1.5.2 The Architect’s confidentiality and non-disclosure obligations shall survive the expiration, suspension or termination of the Design Services Agreement and shall continue for a period of ten (10) years following the expiration or termination of the Design Services Agreement. All Confidential Information, regardless of form, shall be the property of the Authority or Team, as applicable, and shall be returned to the disclosing party upon its request, or in any event, at the expiration or earlier termination of the Design Services Agreement.

1.6 TRADE SECRETS, TRADEMARKS AND TRADE NAMES

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

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

1.6.3 The Architect may publish information (other than Trade Secrets and Confidential Information, which shall not be published) and images resulting from or relating to its Services, only after obtaining the prior written approval of the Authority and Team, which Authority and Team may grant or withhold in their

sole discretion. The approval of the Authority and Team, if granted, may be conditioned upon changes in the text, the use of different images, or reasonable delay in publication to protect Trade Secrets or Confidential Information and other interests of the Authority or Team.

1.7 PRESS RELEASES AND OTHER PROMOTIONAL MATERIALS

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

1.7.2 After Final Completion of the Project, the Architect may use images of the Project and explanatory text in the Architect's marketing and promotional materials, subject to the written approval of the Authority and Team prior to the Architect's first use of such materials, which approval shall not be unreasonably withheld; provided, however, that the Architect's marketing and promotional materials should not include any of the Authority's or Team's Confidential Information.

1.7.3 No signs advertising the services to be performed by the Architect, or identifying any person, firm or entity concerned with the Design Services to be performed by the Architect shall be allowed at the Stadium Site or elsewhere unless approved in writing by the Authority and Team in advance, which approval shall be within the sole and exclusive discretion of the Authority and Team.

1.8 TAXATION

The Architect is responsible for any and all costs of taxes, license fees, royalties and related fees imposed by any Governmental Authority having jurisdiction over the Project and associated with the Design Services provided by the Architect.

1.9 NO WAIVER

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

1.10 SEVERABILITY

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

1.11 INTERPRETATION

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

1.12 MULTIPLE COUNTERPARTS; FAXES

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

1.13 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations, warranties and indemnifications set forth in the Contract Documents, and in any document, instrument or agreement executed or given in connection herewith, which by their terms are applicable after the term of the Contract Documents, will survive the expiration, suspension or termination of the Contract Documents.

ARTICLE 2 **LIMITATION OF LIABILITY**

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

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

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

ARTICLE 3
**SHOP DRAWINGS, PRODUCT DATA AND SAMPLES; WEB-BASED PROJECT
MANAGEMENT SYSTEM**

3.1 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.1.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or a Subcontractor, Sub-Subcontractors, Trade Contractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

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

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

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

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

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

3.1.8 The Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar Submittals unless the Construction Manager has specifically informed the Architect in writing of the existence and nature of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in Shop Drawings, Project Data, Samples or similar Submittals by the Architect's approval thereof.

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

3.1.10 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Construction Manager shall provide the person or parties providing the certification with full information on the specified performance requirements of the materials, systems,

or equipment. The certification shall be based on performance under the operating conditions identified in the Specifications. The Authority and Architect shall be entitled to rely upon the accuracy and completeness of such certificates.

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

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

3.1.13 Pursuant to its Standard of Care, the Architect will review and approve or take other appropriate action upon the Construction Manager's Submittals such as Shop Drawings, Product Data and Samples, for the purpose of: (1) verifying compliance with Applicable Laws and the NFL Rules and Regulations; and (2) confirming that such Submittals are in compliance with the requirements of the Contract Documents. Architect shall be responsible for determining what aspects of the Work shall be the subject of Shop Drawings and Submittals. Architect shall promptly inform the Authority when the Construction Manager, Subcontractor or a Trade Contractor has proceeded with any aspect of the Work in the absence of approved Shop Drawings and Submittals. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager as required by the Contract Documents. The Architect's review of the Construction Manager's Submittals shall not relieve the Construction Manager of the obligations under this **Paragraph 3.1**. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager, Subcontractors or separate Trade Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

3.1.14 The Architect shall review and respond to requests for information ("RFI") about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness but no later than five (5) business days from approval so as not to delay the progress of the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 4 **ARCHITECT**

4.1 ARCHITECT

4.1.1 Duties. Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Authority.

4.1.2 Review of the Contract Documents by Architect. The Contract Documents set forth the responsibilities of the Architect to carefully study and compare the Contract Documents with each other and with information furnished by the Authority and Team. The Architect is responsible to provide immediate notification to the Authority and Construction Manager of any errors, inconsistencies or omissions discovered in the Contract Documents.

4.1.3 Architect's Representations and Warranties.

The Architect represents and warrants the following to the Authority and Team, in addition to any other representations and warranties contained in the Contract Documents, as an inducement to the Authority to execute the Design Services Agreement, which representations and warranties shall survive the execution and delivery of the Design Services Agreement, any termination of the Design Services Agreement and the final completion of the Design Services:

- .1 that it is financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Architect's Design Services and perform all obligations hereunder;
- .2 that it is able to furnish the Architect's Design Services including all Drawings, Specifications, materials, supplies, equipment and labor required to complete the Architect's Design Services and perform its obligations hereunder;
- .3 that it is authorized to do business in the State of Minnesota and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Architect's Design Services;
- .4 that its execution of the Design Services Agreement and its performance thereof is within its duly authorized powers;
- .5 that it possesses a high level of experience and expertise in the programming, architectural design, engineering, and construction administration of projects of the size, scope, complexity and nature of this particular Project, and that it will perform the Architect's Design Services in accordance with the Standard of Care.

The foregoing representations and warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Architect by law with respect to the Architect's duties, obligations and performance hereunder. The Architect's liability hereunder shall survive the Authority's final acceptance of and payment for the Architect's Design Services. All representations and warranties set forth in the Design Services Agreement and these General Conditions, including, without limitation, this **Subparagraph 4.1.3**, shall survive the final completion of the Architect's Design Services or the earlier termination of the Design Services Agreement. The Architect acknowledges that the Authority and Team are relying upon the Architect's skills and experience in connection with the Architect's Design Services described herein.

4.1.4 Field Personnel. The Architect shall employ competent project architect(s) and competent field personnel and staff as outlined within **Exhibit 5** who shall be in attendance at the Stadium Site during performance of the Work. The project architect shall represent the Architect, and communications given to/by the project architect shall be as binding as if given to/by the Architect. Important communications shall be similarly confirmed on written request in each case. The project architect and field engineers shall be satisfactory to the Authority in all respects, and the Authority shall have the right to require Architect to dismiss from the Project any project architect or field engineer whose performance is not reasonably satisfactory to the Authority, and to replace such project architect or field engineer with a project architect or field engineer reasonably satisfactory to the Authority. The Architect shall not replace the project architect or field engineer without the written consent of the Authority.

ARTICLE 5
ADMINISTRATION OF THE CONTRACT DOCUMENTS

5.1 ADMINISTRATION OF THE CONTRACT DOCUMENTS

5.1.1 The Architect will be responsible to coordinate, manage and administer all Design Services of the Architect and the Subconsultants. The Architect is further responsible, as designated by the Authority, to coordinate, manage and administer the services to be provided by any Consultant contracted directly by the Authority or Team.

5.1.2 The Architect will make regular on-site observations to check the quality or quantity of the Work, shall carefully review the quantity and quality of the Work as part of Architect's Design Services, and shall issue written reports of such reviews, shall notify Authority immediately if any Work is found not to be in accordance with the Contract Documents. On the basis of on-site observations and inspections as an Architect, the Architect will keep the Authority informed of progress of the Work, and will guard the Authority against defects and deficiencies in the Work.

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

5.1.4 The Architect shall recommend the rejection of Work that the Architect discovers does not conform to the Contract Documents.

5.1.5 As and when directed, the Architect will prepare Construction Change Directives, subject to the approval of the Authority, and may authorize minor changes in the Work as provided in **Paragraph 6.2.**

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

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

5.1.8 Interpretations and recommendations of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and recommendations, the Architect will endeavor to secure faithful performance by Authority and Construction Manager or Trade Contractor, and will not show partiality to any of them.

5.1.9 The Architect's Design Services shall comply with all Applicable Laws, NFL Rules and Regulations and the Standard of Care set forth in the Design Services Agreement.

5.1.10 Upon the Authority's request at any time during the Design Phases or Construction Administration Phase of the Project and as often as so requested, Architect shall promptly provide the Authority with progress prints. The Authority shall at all times have reasonable access to the files and personnel of Architect and its Subconsultants relating to the Project in order to answer any reasonable questions the Authority may have related to the Architect's performance on the Project.

5.1.11 The Architect shall not be responsible for, nor have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, and shall not be responsible for the Construction Manager's failure to carry out the Work in accordance with the Contract Documents, provided such failure of the Construction Manager is not caused

by the negligent or willful act of the Architect. The Architect shall not be responsible for, nor have control over, the acts or omissions of the Construction Manager, Subcontractors, and any of their agents or employees, or any other persons performing any of the Construction Manager's Work.

5.1.12 The Architect shall take reasonable care to protect the safety of any Person providing or assisting with the Design Services on the Stadium Site whether employed by the Architect, a Subconsultant or otherwise under contract with the Architect or a Subconsultant. The Architect shall require its employees and Subconsultants to comply with all applicable Project safety requirements.

5.2 CLAIMS AND DISPUTES

- 5.2.1 A Claim is a demand or assertion by one of the parties seeking as a matter of right, adjustment or interpretation of terms, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "**Claim**" also includes other disputes and matters in question between the Authority and the Architect, between the Architect and the Construction Manager, or between the Authority and the Construction Manager arising out of or relating to the Contract Documents. Claims must be made by written notice provided by the claimant to the Party against whom the Claim is being made, with copies to The Tegra Group, Inc. and to the Authority. The responsibility to substantiate Claims shall rest with the Party making the Claim.
- 5.2.2 Except as provided in **Subparagraph 5.2.5** below, Claims by any party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later or said Claim shall be deemed waived. In addition to the foregoing, as soon as the claimant recognizes the conditions giving rise to the Claim, claimant shall provide notice of such conditions to the Authority and The Tegra Group, Inc. and shall use its best efforts to cooperate with the Authority and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. Any additional Claim related to the initial Claim that is made after the initial Claim has been implemented by Contract Revision will not be considered. Claims may also be reserved in writing within the time limits set forth in this **Subparagraph 5.2.2**. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in **Paragraph 5.3** and **Paragraph 5.4** shall not commence until a written notice from the claimant is received by the Authority. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.
- 5.2.3 Pending final resolution of a Claim, unless otherwise agreed in writing, the Architect shall proceed diligently with performance of the Design Services, and the Authority shall continue to make payments in accordance with the Contract Documents. In the event the Architect fails to diligently proceed with the Design Services during a period of dispute resolution, the Authority may procure necessary replacement services and back-charge all associated costs to the Architect.
- 5.2.4 The making of a progress payment by the Authority shall constitute a waiver of any right to make Claims by the Architect occurring prior to the time covered by such progress payment except those Claims that have been submitted pursuant to this **Paragraph 5.2**. The making of final payment shall constitute a waiver of Claims by the Architect except those Claims previously made pursuant to this **Paragraph 5.2** that are unresolved as of the date of final payment or that may arise from events occurring after receipt of final payment by the Authority.
- 5.2.5 If any party to any of the Contract Documents suffers injury or damage to person or property because of an act or omission of any other party, of any of such other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one

(21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

5.3 REVIEW OF CLAIMS AND DISPUTES

- 5.3.1 The Authority, will review all Claims once submitted by the Architect and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Authority expects to take make a recommendation, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim, (5) suggest a compromise, or (6) not take any of the above actions, in which case the Claim shall be deemed denied.
- 5.3.2 If a Claim submitted has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Authority, the Authority will then render to the other parties its final recommendation relative to the Claim. The parties may then (1) agree to resolve the Claim or (2) proceed pursuant to **Paragraph 5.4**. If the Authority's recommendation is not submitted within 30 days of receipt of the Claim, the Claim shall be deemed to be denied.

5.4 DISPUTE RESOLUTION

- 5.4.1 The parties agree to attempt in good faith to mediate any disputes involving members of the Project Team and to use their best efforts to reach agreement on the matters of dispute. The parties shall submit a written demand for mediation to the Authority, which shall describe in detail the facts and circumstances of the dispute. The Authority shall designate a neutral third party to serve as mediator. The mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding on the parties involved in the dispute. The opinion shall be submitted to the parties in dispute within twenty (20) days of the mediator hearing the dispute. The parties in dispute will then agree within ten (10) days to resolve the dispute pursuant to the mediator's advice or submit the matter to arbitration pursuant to **Paragraph 5.4.2**. The mediator's costs shall be shared equally by the parties in dispute.
- 5.4.2 Any controversy or Claim arising out of or related to any agreement between the Authority, the Construction Manager, the Architect or any Subcontractor, or any of them, or the breach thereof, shall be resolved by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("**AAA Rules**") in effect as of the date of this Design Services Agreement, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. All proceedings set forth under this **Paragraph 5.4** shall be conducted in Minneapolis, Minnesota.
- 5.4.3 Notice of Demand for Arbitration shall be filed, in writing, with the other party to the applicable agreement, with any party to be joined pursuant to **Subparagraph 5.4.6**, hereof, and with the American Arbitration Association, the Authority, Construction Manager or the Architect, to the extent they are not otherwise a party to the arbitration. Claims subject to arbitration shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the date of this Design Services Agreement, unless all parties to the arbitration agree otherwise. At the Authority's election, and its sole discretion, it may invoke expedited procedures under the AAA Rules for hearing and consideration of any such arbitration proceedings initiated under the Contract Documents. The Project Team acknowledges and agrees that Minn. Stat. §544.42 does not apply to this Project.
- 5.4.4 During arbitration proceedings, the Authority, Architect and any Subconsultant shall comply with **Subparagraph 5.2.3**.
- 5.4.5 Demand for arbitration shall be made only after the parties to a claim have attempted to resolve the dispute pursuant to **Subparagraph 5.4.1** hereof, and within a reasonable time after the claim,

dispute, or other matter in question has arisen. Demand for arbitration shall not be made after any legal or equitable claim, or other matter in question, would be barred by any applicable statute of limitation or repose.

- 5.4.6 Any arbitration shall include, by consolidation or joinder, the Construction Manager, Architect, Subcontractors, Subconsultants, Trade Contractors and other Persons substantially involved in a common question of fact or law if the presence of any such Person is required if complete relief is to be accorded in arbitration. The foregoing agreement to arbitrate and to joinder of parties and claims shall be specifically enforceable under applicable law in any court having jurisdiction thereof. Any contract between the Construction Manager and any Subcontractor, and the Architect and any Subconsultant, shall include provisions for arbitration consistent with this **Paragraph 5.4**.
- 5.4.7 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 6 **CHANGES IN THE WORK.**

6.1 CONSTRUCTION CHANGE DIRECTIVES

6.1.1 A Construction Change Directive is a written order prepared by the Architect, after full consultation with and signed and delivered by the Authority, directing a change in the Work. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change.

6.2 MINOR CHANGES IN THE CONSTRUCTION MANAGER'S WORK

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

ARTICLE 7 **PAYMENT AND COMPLETION**

7.1 SUBSTANTIAL COMPLETION

7.1.1. "Substantial Completion" or "Substantially Complete" shall mean the Work (or separable units or phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is sufficiently complete such that the Stadium may host its first preseason NFL game of the 2023-2024 season. A minor amount of work, as determined by and at the discretion of Authority, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or correction of minor exterior work that cannot be completed due to weather conditions, will not delay determination of Substantial Completion. For purposes of Substantial Completion, specified areas of the entire Work or Project may be individually judged as Substantially Complete. In no event shall Substantial Completion be deemed to have occurred unless such certificates or licenses as required for opening of the Project to the general public have been issued to Authority.

7.1.2 When the Construction Manager considers that the Work, or a portion thereof which the Authority and Architect agree to accept separately, is Substantially Complete, the Construction Manager shall prepare and submit to the Architect and the Authority a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to

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

ARTICLE 8 **PROTECTION OF PERSONS AND PROPERTY**

8.1 SAFETY PRECAUTIONS AND PROGRAMS

8.1.1 The Construction Manager shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Construction Services Agreement. The Construction Manager is responsible to prepare and administer the Project Safety Program. The Architect shall report any violations of the Project Safety Program that it observes to the Construction Manager and the Authority.

ARTICLE 9 **MISCELLANEOUS PROVISIONS**

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

9.2 WRITTEN NOTICE

9.2.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the business address set forth on **Appendix B** hereto and made a part hereof, or to any other address identified in writing by any party hereto.

9.3 RIGHTS AND REMEDIES

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

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

9.4 TESTS AND INSPECTIONS

9.4.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of Governmental Authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Construction Manager shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity designated by the Authority, or with the appropriate Governmental Authorities, and the Authority shall bear all related costs of tests, inspections and approvals. The Construction Manager shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures.

9.4.2 If the Architect, Authority or Governmental Authorities having jurisdiction determine what portions of the Work require additional testing, inspection or approval not included under Subparagraph 9.4.1 the Architect will, upon written authorization from the Authority, instruct the Construction Manager to make arrangements for such additional testing, inspection or approval by an entity designated by the Authority, and the Construction Manager shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures. The Authority shall bear such costs except as provided in Subparagraph 9.4.3.

9.4.3 If such procedures for testing, inspection or approval under Subparagraphs 9.4.1 and 9.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Construction Manager shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses. The Construction Manager also agrees that the cost of testing services required for the convenience of the Construction Manager in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Construction Manager.

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

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

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

9.5 GENERAL PROVISIONS

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

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

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

9.5.4 Any specific requirements in the Contract Documents or of the Design Services Agreement that are the responsibilities or obligations of the Architect also apply to a Subconsultant of the Architect and are also hereby deemed to include a Subconsultant of the Architect of any tier. The omission of a reference to a Subconsultant of the Architect in connection with any of the Architect's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subconsultant of the Architect of any tier under the Contract Documents or any the applicable subcontract.

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

APPENDIX A
TO THE GENERAL CONDITIONS

DEFINITIONS

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

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

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

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

“**Additional Insured Parties**” shall have the meaning set forth in **Subparagraph 9.1.16** of the Design Services Agreement.

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

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

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

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

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

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

“**Applicable Law**” shall mean any and all laws (including all statutory enactments and common law), constitutions, treaties, statutes, codes, ordinances, charters, resolutions, Orders, rules, regulations, guidelines,

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

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

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

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

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

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

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

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

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

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

“Certificate for Payment” shall mean the certificate, issued on a monthly basis, indicating the amount that the Construction Manager is entitled to be paid in connection with each Application for Payment.

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

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

“Claim” shall mean a demand or assertion by one of the Parties seeking as a matter of right, adjustment or interpretation of the terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement.

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

“Confidential Information” shall mean all information (whether or not specifically labeled or identified as confidential), in any form or medium, which is disclosed to or learned by the Architect and/or the Architect’s Subconsultants, the Construction Manager and/or the Construction Manager’s Subcontractors, Trade Contractors or any other member of the Project Team in the performance of the Contract Documents, or acquired directly or indirectly such as in the course of discussion or investigations by the Architect and the Architect’s Subconsultants, and which relates to the Authority or Team’s business, finances, marketing strategy, products, services, research or development, suppliers, clients, or customers, or which relates to similar information of a third party who has entrusted such information to the Authority including, without limitation, any specialized know-how, technical or non-technical data, formula, pattern, plan, strategy, compilation, program, device, method, technique, drawing, process, financial or business information, models, novel analysis, work papers, studies or other documents that contain, reflect, or are based on such information.

“Construction Change Directive” shall have the meaning ascribed in Paragraph 6.1 of the General Conditions.

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

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

“Construction Management Plan” shall mean a comprehensive document prepared by the Construction Manager, for review and approval by the Authority, setting forth in detail the Construction Manager’s planning, administrative and management techniques to complete the Construction Manager’s Work. The Construction Management Plan shall include, without limitation, the GMP, detailed Estimates of Construction Costs, the Construction Schedule, the Project Manual, the Schedule of Values and other information requested by the Authority.

“Construction Manager” shall mean a partnership, corporation, joint venture, other legal entity or any combination thereof, which has entered into the Construction Services Agreement with the Authority for completion of the Construction Manager’s Work on the Project.

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

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

“Construction Schedule” shall mean the schedule prepared by the Construction Manager in CPM format and approved by the Authority, and all adjustments thereto approved by the Authority, that describes the sequence and timing of the Construction Manager’s Work on the Project.

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

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

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

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

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

“Contract Documents” shall mean the complete body of contractual documents that define the Construction Manager’s Work, the Trade Contractor’s Work and collectively describe the complete scope of Work that comprises the Project. The Contract Documents include all documents with respect to the overall Project relationship between the Authority, the Construction Manager, and Trade Contractor’s, and shall specifically include the Construction Services Agreement, Trade Contract Agreements, all exhibits attached to such agreements, the General Conditions to the Construction Services Agreement, Drawings, Specifications, Addenda, Bulletins, the Project Manual, the GMP, the Construction Schedule prepared and approved in accordance with the Construction Services Agreement and other required Submittals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Design Team” shall mean Architect and its Subconsultants.

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

“Direct Personnel Expenses” shall mean all direct and indirect costs of employment including salaries, wages, insurance, customary and/or special benefits associated with the employment of a Person by the Architect for the Design Services.

“Drawings” shall mean graphic or pictorial portions of the Design Documents prepared by Architect, Subconsultants, and Consultants, wherever located and whenever issued, which show, among other things,

the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

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

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

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

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

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

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

“**General Conditions**” shall mean the General Conditions of the Contracts for Design and Construction.

“**GMP**” or “**Guaranteed Maximum Price (GMP)**” shall mean the amount to be paid to the Construction Manager under the Construction Services Agreement for the Construction Manager’s Work.

“**Governmental Approvals**” shall mean all waivers, franchises, variances, permits, authorizations, certificates, registrations, licenses and Orders of and from any Governmental Authority having jurisdiction over the Project, Work, Stadium Site, Adjacent Property, Authority, Team, Consultant, Architect, Subconsultant, Construction Manager, Subcontractor, Trade Contractor, City, County, State, and other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project or any Adjacent Property.

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

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

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

or local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning such waste, substance or material.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Program” shall mean a narrative description of the requirements desired by the Authority and Team and prepared by the Architect to be incorporated into the design of the Project, which shall form the basis for preparation by the Architect of the Design Documents for the Project.

“Project” shall mean the design and construction of a secured perimeter on the south, west, and east sides of the Stadium.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Stadium**” shall mean U.S. Bank Stadium, located in Minneapolis, Minnesota.

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

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

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

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

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

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

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

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

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

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

“**Submittal Schedule**” shall have the meaning set forth in Subparagraph 3.1.5 of the General Conditions.

“**Substantial Completion**” shall have the meaning set forth in **Subparagraph 7.1.1** of the General Conditions.

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

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

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

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

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

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

“**Termination for Convenience**” shall mean the termination of a Party under the Contract Documents by the Authority without cause.

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

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

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

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

“Trade Contractor’s Work” shall mean the complete and total construction of a portion of the Work to be performed by a Trade Contractor as described in a Trade Contract between the Authority and Trade Contractor, and includes all labor, materials, equipment and services to be provided by the Trade Contractor to fulfill its obligations under the Contract Documents. For purposes of these General Conditions, the terms and conditions affecting the Construction Manager shall apply to the Trade Contractor.

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

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

“Value Engineering” shall mean an analysis of the feasibility of alternative systems, equipment and materials to identify such alternative systems, equipment and materials of equivalent quality, and having equivalent characteristics, to those specified in the Design Documents that can be fully specified, obtained and installed at a lower price or, in the sole judgment of the Authority and Team, more-desirable operating characteristics or greater functionality or any combination of these. Value Engineering may also include reviewing Construction Manager proposals that are designed to reduce Construction Cost and enhance the Project. As part of this process, the Design Documents are revised by the Architect as necessary.

“Vendor” shall mean a party supplying equipment or other products or service to the Project under a direct contract with the Authority.

“Work” shall mean the Construction Manager’s Work and any Trade Contractor’s Work.

APPENDIX B TO THE GENERAL CONDITIONS

WRITTEN NOTICE ADDRESSES

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

If to Authority, to:	Minnesota Sports Facility Authorities 1005 4 th Street South Minneapolis, MN 55415 Attention: Chair and Interim Executive Director Fax: 612-332-8334
with a copy to:	Dorsey & Whitney, LLP Suite 1500 50 South Sixth Street Minneapolis, MN 55402-1498 Attention: Jay R. Lindgren Fax: 612-340-2868
If to Architect, to:	[insert]
with a copy to:	[insert]
If to Team, to:	Minnesota Vikings Football, LLC 2600 Vikings Circle Eagan, MN 55121 Attention: Andrew Miller Chief Operating Officer Fax No.: 952-828-6514
with a copy to:	Minnesota Vikings Football, LLC 2600 Vikings Circle Eagan, MN 55121 Attention: Karin Nelson Executive Vice President and Chief Legal Counsel Fax No.: 952-828-6514

Or to such other address or addresses as Authority and Architect shall from time to time designate by notice given and delivered as aforesaid.