

REQUEST FOR PROPOSALS  
**Secure Perimeter, Multipurpose Room Addition, and Club Renovations Project**  
CONSTRUCTION MANAGER AT RISK FOR CAPITAL IMPROVEMENT TO U.S. BANK STADIUM  
IN MINNEAPOLIS, MINNESOTA

November 16, 2022

A. Project Background and Objectives

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

As set forth in the Act, the Authority may make capital improvements to design, develop, and construct the Stadium and the Stadium Infrastructure, including the certain secure perimeter, multipurpose room addition, and club renovations as capital improvements that the Authority is soliciting in this Request for Proposals (“RFP”). The secure perimeter, room addition, and club renovations are three separate phases that shall be referred to in this RFP as the “Project”. To that end, the Authority has prepared this RFP for the Project. Those who respond to this RFP shall be referred to as “Proposers”.

The Project is located at the Stadium. The Specification Documents identifying and indicating the scope of the Project are also incorporated within this RFP as **Exhibit A**. The Specifications Documents meet the standards required for a National Football League (“NFL”) franchise, as well as additional standards established by the Authority. The Secured Perimeter phase of the Project is to be completed by the first Minnesota Vikings’ 2023-2024 pre-season home football game in August 2023 (the “Required Completion Date”). The multipurpose room addition and club renovations phases of the Project are to be completed by the first Minnesota Vikings’ 2024-2025 pre-season home football game in August 2024 (the “Required Completion Date”).

B. Scope of Services: The project will be broken down into two steps. Step 1 to include preconstruction services during Schematic and Design Development including establishing a GMP for each phase of the Project. Step 2 would include construction services during preparation of construction documents and the construction phase. The scope of services to be included for each phase is defined below.

- Phase I of the project is the secured perimeter, which includes installation of a K12 secured perimeter around the Stadium on the north, east and south sides only including

associated secured perimeter structural foundations and landscaping restoration. The west side of the Stadium and the plaza area will be included in a future Phase.

- Phase II of the project is the multipurpose room addition to include 7,300 sf of new mezzanine space over the loading dock area. Space will require new HVAC, electrical, plumbing, and technology. Addition components to include warming kitchen, vending area, men's and women's restrooms, storage, and an employee training area.
- Phase III of the project is the club renovations to include FMP Club, Little Six Club and Truss Bar venues. Construction Manager to work closely with architect as scope is evaluated and defined.

Step 1: The successful Proposer to the RFP will be engaged to provide preconstruction services during Schematic Design and Design Development including establishing a GMP for each Phase of the Project. (as further described in the RFP and any addenda that will be issued to this RFP) including, without limitation:

- Development of budgets and schedules at key milestones including schematic, and design development for each potential solution required for each scope of work. Within each, schedule consideration should be given for AE design efforts, key Authority activities, preconstruction, and construction activities.
- Construction manager to work closely with selected architect/engineer as they advance the design documents from conceptual to final construction documents. Providing recommendations regarding building systems, components, and materials for long term performance, life cycle cost analysis, and economy.
- CMAR will identify long lead items requiring early bid packages and recommend issue dates for same to meet required completion date.
- Construction manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction and the establishment of a GMP per section 2.9.10 on the Contract Agreement.
- Additional services as requested and documented with fees as Owner directs.

The Authority shall notify the Construction Manager in writing and within thirty (30) days after the date on which the Authority receives the GMP Proposal for each Phase that the Authority either accepts or rejects the GMP Proposal for that Phase; provided, however, that the Authority may reasonably extend that thirty (30) day period by giving written notice of such extension to the Construction Manager. If no such election notice is received by the Construction Manger within such period, the Authority shall be deemed to have elected to reject the GMP Proposal. Upon written approval and acceptance of the GMP Proposal for a Phase by the Authority, the Construction Manager is deemed to have guaranteed that the Contract Sum of the Work shall not exceed the amount set forth in the GMP Proposal, and that amount will be referred to as the Guaranteed Maximum Price, which is only subject to modification in accordance of the GMP Proposal, the Authority shall prepare an amendment (the Guaranteed Maximum Price Amendment") to the Contract Agreement for execution by the

Authority and the Construction Manager that evidences the Guaranteed Maximum Price for that Phase.

Step 2: The successful Proposer to the RFP will be engaged to provide Construction Services during Construction Documents and each construction Phase of the Project (as further described in the RFP and any addenda that will be issued to this RFP) including, without limitation:

- CMAR to work with the Authority and AE to develop a work plan for design activities in support of the schedule and budget for the project.
- Ongoing, the CMAR will evaluate all systems, components, and materials for constructability, economy, long-term performance for use intended and schedule impacts, and provide recommendations for preferred options consistent with cost and schedule goals.
- Acquire all permits and conform to local and State codes.
- Provide competent, experienced full-time staff, including an experienced construction field superintendent and project management team to coordinate the work, maintain the progress of the subcontractors, coordinate with ongoing activities and operations, and provide overall direction to the project during the construction phase.
- Demonstrate high levels of effective, proactive project leadership.
- Work cooperatively and constructively with members of the Project Team to foster positive relationships that support positive outcomes for the team members and the project.
- CMAR will be contractually obligated to not reassign key staff members to other projects without Authority's prior written consent. The Authority will have the approval rights of any and all new personnel assigned to this project.
- Implement and maintain cost control methods with "open book" sharing of cost information.
- Manage bidding process, evaluating proposals, and interviewing key subcontractors.
- If the CMAR desires to self-perform portions of the work, the construction manager must provide their bid directly to the Authority 24-hours prior to the bid due date and all subcontractors bids for those portions of the work will be bid directly to the Authority. CMAR to award and administer all subcontracts and material purchases.
- Development of construction disruption avoidance plans for each project component so that the Authority can remain fully operational during the construction phase.
- The work required for the Project must be coordinated with the event schedule for the stadium.
- Conduct weekly or bi-weekly job site meetings that include appropriate subcontractors, Authority's key personnel, Architect/Engineer representatives to review open issues, scheduled work, and resolve pending and upcoming issues.
- Maintain LEED Gold Sustainability Guidelines for Design and Construction.
- Additional services as requested and documented with fees as Owner directs.

C. Intent and Process of the Request for Proposals

This RFP is focused on the selection of Proposer who will provide the best value to the Authority in the identification, design, and coordination of the Project.

Proposers should have significant experience in preconstruction and construction similar to the Project. It is the desire of the Authority to consider as part of its selection criteria the commitment of the Proposer to exert good faith efforts to comply with the plan of the Authority to ensure equitable opportunities for Minority Owned Business Enterprises (“MBE”) and Women Owned Business Enterprises (“WBE”) to participate in the Project. The successful Proposer must also demonstrate the ability to exert good faith efforts to comply with workforce goals and targeted zip code hiring goals, and work with organizations to develop effective MBE, WBE and workforce recruitment efforts during the preconstruction, bidding, and construction of the Project. The Authority has developed an Equity Plan available on its website, and as described below, each Proposer should provide a plan describing how they will encourage the participation and utilization of appropriate workforce, MBEs and WBEs in the Proposers’ performance of their services. MBEs and WBEs that are interested in acting as the Proposers for the Project are encouraged to respond to the RFP. Equity Reporting must comply with MSFA’s equity plan.

D. Requested Qualifications

The Authority reserves the right and discretion to determine the qualifications and responsibility of the Proposers to perform the work and services that are the subject of the RFP. It is the request and intent of the Authority that Proposers responding to the RFP have significant experience in the preconstruction and construction of the Projects and associated materials.

E. RFP Timeline

Advertise and issue Request for Proposals	November 16, 2022
Pre-proposal Site Visit (virtual) appointment with Ed Kroics, email:	Send Email request to schedule
Pre-proposal Site Visit Dates	After November 16, 2022
Submittal of Questions and signed Confidentiality Agreement Due by	November 28, 2022, at 4:00 pm
Proposals Due	December 5, 2022, at 1:00 pm
Interviews of Selected Proposers (virtual)	December 8, 2022
Selection of Construction Manager	December 14, 2022 @ Board Meeting
Project Start	Mid December 2022
Project Completion (Secured Perimeter)	August 2023
Project Completion (Multipurpose Rm Addition/ Club Renovations)	August 2024

By submitting a Proposal, the Proposer affirms that this timeline must and can be met to avoid the potential for significant harm to the progress of the Project and to the interests of the Authority and public.

#### F.1 Proposer Qualifications

The following items shall be included in a Proposal executive summary:

1. Proposer's name and address of office that would have central responsibility for the work. Identify the business form of Proposer and list the principal shareholders or other business owners.
2. Provide a narrative describing successful examples of your firm's experience in successfully construction of similar projects at sports stadiums or similar.
3. Outline your firms process with working with various stakeholders on multiple projects simultaneously in an occupied venue.
4. Describe ownership of your firm and list its principal shareholders.
5. Describe your firms' practices and processes in minimizing and dealing with disputes.
6. Proposed fees and structure. See attached Construction Manager At-Risk, Fee and General Conditions Worksheet / Questionnaire, Exhibit G.
7. Submit Exhibit C – Confidentiality Agreement and Exhibit D – Non Collusion Statement
8. Detail any arbitration or litigation results or in process since year 2018 and detail any current claim for which arbitration or litigation has not been commenced, including any matter tendered to the firm's insurance carrier(s).
9. Provide a clear description on a separate document any exceptions taken to terms or conditions on anything noted herein or attached.
10. Provide comments to the draft Construction Management Agreement Between the Minnesota Sports Facilities Authority and the Construction Manager in a "blackline format." The successful firm will be required to enter into an Agreement immediately and substantially in the form of the draft Agreement, so any exceptions to the terms and conditions that are not included in your proposal will not be open for discussion at a later date.
11. Provide a detailed Construction Schedule.

#### F.2 Submittal Requirements: Evaluation of Proposals

Proposers shall include the following items in their Proposal. As described below, the Authority will score Proposals on a point system. Proposers who fail any criterion may have their Proposal rejected. A total of 1,000 points will be available as follows:

Project Delivery:	300 points
Technical Approach:	300 points
Commercial Terms:	200 points
Interview:	100 points
Equitable Contracting and Hiring:	100 points

The Proposals receiving the highest score(s), as determined by the Authority in its sole discretion, will then be short-listed and selected to enter into final discussions and negotiations with the Authority, as a result of which the Authority will select in its discretion the Proposer whose final Proposal is most advantageous and the best value to the Authority as permitted by the Act.

### **Project Delivery – 300 Points**

1. Similar Project Experience. Provide examples for each project phase, secured perimeter, multipurpose room addition, and club renovations.
2. Project Personnel. Provide names and resumes of key personnel who would be directly responsible for the work, including superintendent and project manager. Provide key contact telephone, fax, and email addresses. Provide organizational chart listing proposed team members by name and responsibility. Indicate other projects to which team members are assigned currently for years 2022 and 2023. Any other relevant experience pertinent to the requirements for this Project shall be listed under “Other Significant Experience.”
3. Project Specific Risks and Solutions. Identify and describe the risks Proposer perceives as being significant for the scope of services required by this RFP, and how Proposer intends to mitigate, manage, and control those risks.

### **Technical Approach – 300 Points**

1. Provide schedule and narrative outlining how work would be accomplished in the timeframe noted in RFP for each Project phase, secured perimeter, multipurpose room addition, and club renovations.

### **Commercial Terms – 200 Points**

1. Price. Provide itemized pricing utilizing Exhibit G for all necessary preconstruction and construction services for a complete Project and all scope of work items required by this RFP, including without limitation:
  - Secure Perimeter Materials and lead times
  - Multipurpose Room Addition
  - FMP Club, Little Six Club and Truss Bar Renovations
2. Agreement to or Requested Revisions to Agreement Terms. The extent to which revisions are requested to the Authority’s proposed Agreement will be given point deductions in the sole discretion of the Authority.

### **Interview – 100 Points**

The Authority will conduct an interview with qualified Proposers that have submitted a responsive proposal. The Authority, at its sole discretion, will select which Proposers to interview.

**Equitable Contracting and Hiring – 100 Points**

1. Hiring and MBE/WBE Utilization. Describe Proposer’s practices and history of hiring women and minorities. Also, describe Proposer’s specific plan to reach targeted goals for MBE and WBE construction participation on this project, and Proposer’s strategies for employing women and members of minority communities to comply with the Authority’s Equity Plan.

G. Other Terms

The Authority may change its scoring of Proposals as a result of interviews of and negotiations with Proposers.

A Proposer’s response may also contain any narrative, charts, tables, diagrams, or other materials in addition to those called for herein, to the extent such additions are useful for clarity or completeness of the response. Attachments should clearly indicate on each the page the paragraph in the RFP to which they pertain.

The RFP, responses to it, and any subsequent negotiations and discussions shall in no way be deemed to create a binding contract or expectation of an agreement between the Proposer and the Authority.

Each Proposer submitting a Proposal in response to this RFP acknowledges and agrees that the preparation of all materials for submittal to the Authority and all presentation, related costs, and travel expenses are at Proposer’s sole expense and that the Authority shall not, under any circumstances, be responsible for any cost or expense incurred by the Proposers, The Authority shall be allowed to keep any and all materials supplied by the Proposers in response to the RFP.

The Authority reserves the right to accept or reject any or all Proposals, to amend or alter the selection process in any way by addendum, to postpone the selection process for its own convenience at any time, and to waive any non-material defects in proposals submitted. Proposals are required to remain open and subject to acceptance until an award is finalized, or a minimum of (90) days following the date of submission of Proposals. The Authority also reserves the right to accept or reject any individual sub-consultants that the successful Proposer proposes to use.

I. Payment and Performance Bonds

By Minnesota statutes and the Act, payment and performance bonds will be required from the successful Proposer in the amount of 100% of the cost of the Proposal.

II. Pre-Proposal Meeting

Pre-proposal site visits will be by appointment only. Arrange a site visit with Ed Kroics at email: [EKroics@usbankstadium.com](mailto:EKroics@usbankstadium.com) .

Proposals are due by 1:00 PM CST December 5, 2022. One electronic copy and 2 bound copies of each Proposal should be enclosed in a sealed envelope addressed to:

Minnesota Sports Facilities Authority  
Attention: Mary Fox-Stroman  
1005 4<sup>th</sup> Street South  
Minneapolis, Minnesota 55415

With an electronic copy sent via email to:

Mary Fox-Stroman, email: [Mary.Fox-Stroman@MSFA.com](mailto:Mary.Fox-Stroman@MSFA.com)  
Nate Pearson, email: [npearson@tegragroup.com](mailto:npearson@tegragroup.com)

### III. Questions or Inquiries

All questions must be submitted via email no later than 4:00 pm CST. November 28, 2022, to:

Mary Fox-Stroman, email: [Mary.Fox-Stroman@MSFA.com](mailto:Mary.Fox-Stroman@MSFA.com)  
Nate Pearson, email: [npearson@tegragroup.com](mailto:npearson@tegragroup.com)

### IV. Minnesota Government Data Practices

All Proposals are eventually subject to the Minnesota Government Data Practices Act, Minn. Statutes, Chapter 13, but the Act prohibits disclosure of any information derived from Proposals submitted by competing Proposers, and the content of all Proposals is nonpublic data under Chapter 13 until such time as notice to award a contract to the successful Proposer is given by the Authority. Proposers shall note with their Proposal any data in their Proposal that they consider proprietary information or otherwise private and confidential.

### V. Prevailing Wages

Pursuant to Minn. Stat. 177.41 to 177.44, and corresponding Minnesota Rules 5200.1000 to 5200.1120, the contract contemplated by this RFP is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

Please see Section 17.11 of the attached Agreement for the specific contemplated contract terms. The then-current applicable prevailing wages shall be incorporated into the Agreement

as Exhibit 9. Current prevailing wage amounts for Hennepin County are set forth at the website for the Minnesota Department of Labor and Industry, at the following link:

<http://workplace.doli.state.mn.us/prevwage/commercial.php>

VI. Project Labor Agreement

The Proposer will need to agree to accept and be bound by the Project Labor Agreement attached to the Agreement as Attachment A.

VII. Other Exhibits to the RFP

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|-----------|--|
| Exhibit A | Project Scope Documents  |
| Exhibit B | Construction Management Agreement Between the Minnesota Sports Facilities Authority and the Construction Manager. Proposer should indicate any proposed changes to the terms provided by the Authority by including a red-lined version of its proposed version. |
| Exhibit C | Confidentiality Agreement  |
| Exhibit D | Non-Collusion Affidavit  |
| Exhibit E | Minnesota Department of Human Rights – Certificate of Compliance   |
| Exhibit F | Acknowledgement and Attestation Form   |
| Exhibit G | Construction Manager At-Risk, Fee and General Conditions Worksheet /Questionnaire  |

## **EXHIBIT A – Project Scope Documents**

### **The Scope of Services for the Construction Manager at Risk for the Secured Perimeter, multipurpose room addition, and club renovations.**

1. Construction of Phase I includes installation of a K12 secured perimeter around the Stadium on the north, east and south sides only including associated secured perimeter structural foundations and landscaping restoration. The west side of the Stadium and the plaza area will be included in a future Phase.
2. Phase II includes construction of the new multipurpose room addition to include approximately 7,300 sf of mezzanine space over the existing loading dock area. Space to require new HVAC, electrical, plumbing, and technology. Addition components to include warming kitchen, vending area, men's and women's restrooms, storage, and an employee training area.
  - a. Loading dock area will need to be partially operational during the construction of the mezzanine. Construction Manager to coordinate with MSFA and ASM on the event schedule for the stadium.
  - b. Access to this area will occur from the upper floor so additional vertical transportation will not be required.
3. Phase III includes club renovations in the FMP Club, Little Six Club, and Truss Bar.
  - a. Club renovations may include select demolition of existing non-bearing walls, painting, flooring, lighting, casework, electrical, and technology based on programming of each space.
4. Other activities to include the following for each component of the Project, noted above.
  - a. Development of budgets and schedules at key milestones including concept, schematic, design development and construction documents.
  - b. Construction manager to work closely with selected architect/engineer as they advance the design documents from conceptual to final construction documents. Providing recommendations regarding building systems, components, and materials for long term performance, life cycle cost analysis, and economy.
  - c. Schedules to include architect/engineer's design efforts, key Authority activities, pre-construction, and construction activities.
  - d. Acquire all permits and conform to local and State codes.
  - e. Provide competent, experienced full-time staff, including an experienced construction field superintendent and project management team to coordinate the work, maintain the progress of the subcontractors, coordinate with ongoing activities and operations, and provide overall direction to the project during the construction phase.
  - f. Implement and maintain cost control methods with "open book" sharing of cost information.
  - g. Manage bidding process, evaluating proposals, and interviewing key subcontractors.
  - h. Conduct weekly or bi-weekly job site meetings that include appropriate subcontractors, Authority's key personnel, Architect/Engineer representatives to review open issues, scheduled work, and resolve pending and upcoming issues.
  - i. Procurement of all long lead time materials per Section 2.9.9 of the Agreement.
  - j. Any demolition required to complete scope of work.
  - k. Site fencing, temporary walls and/or other items required to keep site secured and safe at all times during construction.
  - l. Additional services as requested and documented with fees as Owner directs.
5. Coordinate meetings and work with Owner and Owner's advisors for approvals to the City of Minneapolis.

6. Owner may add additional services as required. All additional services will be documented with a fee proposal and contract revision request.

## EXHIBIT B

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

**CONSTRUCTION MANAGEMENT AGREEMENT**

**THIS CONSTRUCTION MANAGEMENT AGREEMENT (“Agreement”)** is made as of the \_\_\_\_ day \_\_\_\_\_ of in the year of \_\_\_\_\_ (“**Effective Date**”).

**BY AND BETWEEN**

**The AUTHORITY:**

**MINNESOTA SPORTS FACILITIES AUTHORITY**  
1005 4<sup>th</sup> Street South  
Minneapolis, MN 55415

and the

**CONSTRUCTION MANAGER:**

For:

For the following **PROJECT:**

Capital Improvement to the Stadium and Stadium Infrastructure for U.S. Bank Stadium for the following work:

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## 1. General Provisions

1.1 **Definitions.** The definitions set forth in **Appendix A** shall apply in this Agreement.

1.2 **Correlation and Intent.** It is the intent of the Construction Manager and Authority that the Contract Documents include all items necessary for proper construction, execution and completion of the Construction Manager Work. The Contract Documents are complementary, and what is required by any one shall be binding as if required by all. Work not covered in the Contract Documents, but reasonably inferable from the Contract Documents, will be included as part of the Construction Manager Work. The Construction Manager covenants with the Authority to furnish the Construction Manager's best skill and judgment and to cooperate with the Project Participants in furthering the interests of the Authority and to perform the Construction Manager Work in an expeditious manner. The Construction Manager represents that the Construction Manager has visited the Project Site, become familiar with the local and specific conditions under which the Construction Manager Work is to be performed and correlated personal observations with requirements of the Contract Documents and Agreement. Prior to submission of a GMP Proposal, the Construction Manager shall evaluate and satisfy itself as to the conditions and limitations under which the Construction Manager Work is to be performed, including (a) the location and layout of the Project Site, (b) prevailing climatic conditions, (c) anticipated labor supply and costs, (d) market conditions that will impact the Guaranteed Maximum Price, (e) the requirement that the Construction Manager has completed a thorough and comprehensive review of the Contract Documents and understands and recognizes the complete scope of the Construction Manager Work required by the Agreement, (f) existing conditions that will impact the Construction Manager Work, and (g) availability and cost of materials, tools, and equipment. The Authority shall not be required to make any adjustment in the amount due, if any, under the Agreement to the Construction Manager or the time required for Construction Manager's performance of the Construction Manager Work under the Agreement. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and Applicable Laws, the Construction Manager shall (x) provide the better quality or greater quantity of the Construction Manager Work or (y) comply with the more stringent requirement, either or both in accordance with the Authority's reasonable interpretation.

1.3 **Project Site.** Before submitting a GMP Proposal to the Authority, the Construction Manager shall verify all existing conditions and measurements at the Project Site and shall be responsible for the correctness of such measurements. Any difference that may be found shall be submitted to the Authority for interpretation before proceeding with the Construction Manager Work. Any errors due to the Construction Manager's failure to so verify all such dimensions or locations shall be promptly rectified by the Construction Manager without any additional cost to the Authority.

1.4 Attached hereto as Exhibit \_\_\_ is the **Authority's November 4, 2022 Request for Proposals** (the "**RFP**"). The parties hereto agree that the information set forth in the RFP is hereby incorporated into this Agreement by reference and is to be used by the parties hereto to provide additional information and clarification with respect to the Project. However, to the extent of a conflict between the terms and provisions of this Agreement

(exclusive of the RFP), and the RFP, the terms and provisions of this Agreement (exclusive of the RFP) control.

1.5 The Project is comprised of the following three (3) phases (singular, a “Phase”; plural “Phases”):

1.5.1 Work required for the installation of a K12 secured perimeter around the Stadium on the north, east and south sides only including associated secured perimeter structural foundations and landscaping restoration (“Phase I”);

1.5.2 Work required for club renovations to include FMP Club, Little Six Club and Truss Bar venues. (“Phase II”); and

1.5.3 Work required to construct a multipurpose room addition, new HVAC, electrical, plumbing, and technology systems, warming kitchen, vending area, men’s and women’s restrooms, storage areas, employee training area, and (“Phase III”).

1.6 The Authority’s issuance of a Proceed for a Phase is a condition precedent to the Construction Manager’s commencement of the Work therefor, and the Construction Manager shall not commence the Work for a Phase unless, and until, the foregoing condition precedent is either (i) satisfied by the Authority’s issuance of written notice to proceed for the Phase in accordance with the terms of this Agreement; or (ii) the Authority’s express waiver in writing of the condition precedent. The Authority, at its option, may issue a notice to proceed for each Phase individually, or for one or more Phases simultaneously. Excepts as may be expressly set forth to the contrary in this Agreement, the Authority’s issuance of a notice to proceed for one or more Phases does not obligate the Authority to issue a notice to proceed for one or more additional Phases. Unless identified to the contrary in a notice to proceed, all Phases are subject to the terms of this Agreement, and the Construction Manager is required to provide a GMP Proposal for each Phase for which the Authority issues a notice to proceed.

## **2. Construction Manager Work.**

2.1 **Scope of Work.** The Construction Manager shall provide, or require to be provided, all non-professional design services, work, labor, materials, equipment and other necessary payments as are required to complete the Construction Manager Work as set forth in the Contract Documents. The Construction Manager Work is intended to be inclusive of all construction, non-professional design services, work, labor, materials, Testing, tools, supplies, facilities, management, supervision, permits, licenses, taxes, inspections and equipment required by, or reasonably inferable from, the Contract Documents necessary to complete the Construction Manager Work pursuant to the Construction Schedule for the Guaranteed Maximum Price.

2.2 **Responsibilities.** The Construction Manager Work consists of those services performed by the Construction Manager, its employees, Subcontractors, Suppliers, and Sub-subcontractors of all tiers. The Construction Manager is solely and strictly responsible for the performance of all Persons performing the Construction Manager Work, including

Subcontractors, Suppliers, and Sub-subcontractors of all tiers. It is the responsibility of the Construction Manager to ensure that all Subcontractors and Suppliers, including Sub-subcontractors at every tier, that is performing any portion of the Construction Manager Work are familiar with all the terms and conditions of this Agreement and the Contract Documents and that their performance is in accordance therewith.

**2.3 Cooperation.** The Construction Manager shall cooperate in all respects with other Persons associated with the Authority, which may include the Architect, insurers, the Team, sponsors, the National Football League, television broadcast networks, radio broadcasters, cellular/distributed antennae providers, the Stadium Manager, and Governmental Authorities.

**2.4 Representation and Warranty.** By submitting a GMP Proposal to the Authority, the Construction Manager warrants and represents the following: (a) the Guaranteed Maximum Price identified therein is just and reasonable compensation for all the Construction Manager Work; (b) said Guaranteed Maximum Price is sufficient to address all foreseen and unforeseen conditions that will impact the Construction Manager Work and ability to complete the Construction Manager Work in accordance with the Guaranteed Maximum Price and Contract Time; (c) the Contract Time is adequate for the performance of the Construction Manager Work; and (d) the Construction Manager has a complete understanding of the scope of the Construction Manager Work and has been provided adequate time and sufficient information to determine the Guaranteed Maximum Price.

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

**2.6 Labor Harmony.** The Construction Manager shall only employ labor in connection with the Construction Manager Work capable of working harmoniously with all trades, crafts, and any other Persons associated with the Project. The Construction Manager shall also use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance. The Construction Manager agrees to accept and be bound by the Project Labor Agreement attached hereto as Attachment A, including any requirement that it execute a letter of assent, acknowledgment, or other similar document further documenting its agreement to the terms set forth in the Project Labor Agreement. In case the progress of the Construction Manager Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of a conflict involving any labor agreement or regulation, the Authority may require that other material or equipment of equal kind and quality be provided pursuant to a Contract Revision, Change Order, or Construction Change Directive to maintain the Construction Manager's Construction Schedule at no additional cost to the Authority.

**2.7 Substitutions and Alternates.** If, after submission of a GMP Proposal, the Construction Manager desires to submit an Alternate product in lieu of what has been specified or shown in the Contract Documents, the Construction Manager may proceed

only after receiving written approval from the Authority. All prototypes that have been approved must be installed in their required locations by Construction Manager, unless an Alternate product has been approved in writing by the Authority.

**2.8 Permits.** The Construction Manager shall secure, pay for, and, as soon as practicable, furnish the Authority with copies or certificates of all permits and fees, licenses and inspections necessary for the proper execution and completion of the Construction Manager Work. The Construction Manager shall procure all certificates of inspection, occupancy, permits, and licenses, pay all customary charges and fees, and give all notices necessary and incidental to the lawful prosecution of the Construction Manager Work. The Construction Manager shall deliver certificates of inspection, use, and occupancy to the Authority upon completion of the Construction Manager Work in sufficient time for occupancy or use of the Construction Manager Work in accordance with the Construction Schedule. If the Construction Manager performs any Construction Manager Work knowing it to be contrary to Applicable Laws without such notice to the Authority and Architect, the Construction Manager shall assume full responsibility for such Construction Manager Work and shall bear any and all costs attributable to correct it and all damages resulting therefrom.

## **2.9 Preconstruction Phase**

2.9.1 The Construction Manager shall provide the preconstruction phase services in this Section 2.9 for the Phase or Phases identified in an Notice to Proceed.

2.9.2 The Authority and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager.

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

2.9.4 The Construction Manager shall schedule and conduct meetings with the Architect and Authority to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

2.9.5 The Construction Manager shall advise the Authority and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Authority and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

2.9.6 The Construction Manager periodically update the Construction Schedule for the Authority's review and approval. The Construction Manager shall obtain the Architect's approval for the portion of the Construction Schedule relating to the performance of the Architect's services. The Construction Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Authority consultants' services, and the Authority's responsibilities; and identify items that affect the Project's timely completion. Each updated Construction Schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Authority.

2.9.7 The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

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

.1 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents for the Phase, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Authority, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Authority and Construction Manager agree on Guaranteed Maximum Price. The estimate shall be provided for the Architect's review and the Authority's approval. The Construction Manager shall inform the Authority and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents for a Phase, the Construction Manager shall consult with the Authority and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Authority's approval.

.3 The Construction Manager shall provide recommendations and information to the Authority and Architect regarding equipment, materials, services, and temporary Project facilities.

.4 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Authority's review and approval.

2.9.9 The Construction Manager shall develop bidders' interest in the Project.

2.9.10 The Construction Manager shall prepare, for the Architect's review and the Authority's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Authority agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Authority shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Authority shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

**2.10 Construction Manager's Construction Schedule.** The Construction Manager shall prepare and maintain a Construction Schedule for the Phase or Phases identified in a Notice to Proceed.

2.10.1 The Construction Manager acknowledges and agrees it must coordinate its Construction Manager Work and that in no event shall the Authority be responsible for any costs incurred by Construction Manager due to its responsibility to coordinate its Construction Manager Work and not interfere with other Construction Managers and vendors.

2.10.2 In the event the Authority determines that the performance of the Construction Manager Work has not progressed or reached the level of completion required by Construction Schedule, the Authority shall have the right, but not the obligation, to order the Construction Manager to take corrective measures necessary to expedite the progress of construction, including (a) working additional shifts or overtime, (b) supplying additional manpower, equipment, and facilities, and (c) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Construction Manager Work complies in the Authority's reasonable judgment with the stage of completion required by the approved Construction Schedule. The Authority's right to require Extraordinary Measures is solely for the purpose of ensuring the Construction Manager's compliance with the Construction Schedule or as required by this Paragraph. To the extent that the need for Extraordinary Measures is the responsibility or fault of the Construction Manager, the Construction Manager shall not be entitled to an adjustment in the Guaranteed Maximum Price or Contract Time in connection with Extraordinary Measures

pursuant to this Paragraph 2.11. Float in the Construction Schedule shall be utilized for the benefit of the Project.

**2.11 Shop Drawings, Product Notes and Samples.** The Construction Manager shall perform no portion of the Construction Manager Work until the associated Shop Drawings, Product Data, Samples, or similar Submittals related to that Construction Manager Work has been reviewed and approved by the Authority (or if designated by the Authority, by its designee). Such Construction Manager Work shall be in accordance with approved Submittals. The Construction Manager shall not be relieved of responsibility for deviations from requirements of the Agreement by the Authority's (or if designated by the Authority, its designee's) approval of Shop Drawings, Product Data, Samples, or similar Submittals, unless the Construction Manager has specifically informed the Authority (or if designated by the Authority, its designee) in writing of the existence and nature of such deviation at the time of submittal and the Authority (or if designated by the Authority, its designee) 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 Authority's (or if designated by the Authority, its designee's) approval thereof. The Construction Manager represents and warrants that all Shop Drawings shall be prepared by Persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Contract Documents or Applicable Laws, by a licensed design professional.

**2.13 Cutting and Patching.** The Construction Manager shall be responsible for cutting, fitting, or patching required to complete the Construction Manager Work or to make the Construction Manager Work fit together properly. The Construction Manager shall be responsible for cutting, patching, repairing, and cleaning of any and all Project walls, floors and ceilings that it may damage during construction. The Construction Manager shall not damage or endanger a portion of the Construction Manager Work, the fully or partially completed work of a separate Construction Manager, Vendor, or any other Project Participant by cutting, patching, or otherwise altering such construction, or by excavation, except with written consent of the Authority and Construction Manager, the other Construction Manager or Vendor; such consent shall not be unreasonably withheld. The Construction Manager shall not unreasonably withhold from the Authority, Construction Manager, Construction Manager, or Vendor the Construction Manager's consent to cutting or otherwise altering the Construction Manager Work. Altering or cutting of structural members will not be allowed without written approval by the Authority. The Construction Manager shall in all cases exercise extreme care in cutting operations and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless, avoidable cutting or damage is not permitted and the Construction Manager will be held responsible for such avoidable damage.

**2.14 Cleaning Up.** The Construction Manager shall keep the premises of the Construction Manager Work and all surrounding areas to the Project Site free from (a) accumulation of waste materials, debris, or rubbish; (b) the Construction Manager's tools, construction equipment, machinery; and (c) surplus materials, and any excess mud, gravel, or earth caused by operations under the Agreement. At completion of the

Construction Manager Work, the Construction Manager shall remove from and about the Project all waste materials, debris, rubbish, the Construction Manager's tools, construction equipment, machinery, surplus materials, and any excess mud, gravel, or earth from and around the Project and the surrounding rights-of-way. If the Construction Manager fails to cleanup as required, the Authority may, but shall not be obligated to, perform the Construction Manager's cleanup and charge the cost thereof to Construction Manager.

**2.15 Access to Construction Manager Work.** The Construction Manager shall provide the Authority, its respective agents and representatives, the Architect, and the Stadium Manager access to the Construction Manager Work in preparation and progress wherever located.

**2.16 Means and Methods.** In no event shall the Authority or Indemnites have any responsibility or liability for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Construction Manager Work, notwithstanding any of the rights and authority granted the Authority and Indemnites in the Agreement.

### **3. Design Services.**

**3.1 Performance and Coordination.** To the extent that the Construction Manager performs any Design Services for a Phase, they shall be performed in strict accordance with all provisions of the Act. Construction Manager shall coordinate and integrate any such Design Services with the Architect, Construction Manager, if any, and other Construction Managers and Vendors to allow the Construction Manager, Vendors, and Construction Managers to complete their work.

**3.2 Standard of Care.** The Design Services provided by Construction Manager for the design and construction of its Construction Manager Work shall be provided pursuant to the Standard of Care applicable to similarly situated design professionals performing similar professional design services.

### **4. Contract Time.**

**4.1 Time.** The Construction Manager shall perform the Construction Manager Work expeditiously, efficiently, and safely in accordance with the Construction Schedule for the Phase. The Construction Manager shall be considered to have achieved Final Completion for a Phase only after the Construction Manager completes all of the Construction Manager Work and the Construction Manager Work is accepted by the Authority.

**4.2** "Substantial Completion" or "Substantially Complete" shall mean the date or dates that the Work (or separable units or phases as may be agreed to by the Authority) for a Phase is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Construction Manager Work is fully commissioned, fully operational, received all required certifications and approvals pursuant to Applicable Law, and will permit beneficial use by the Authority. A minor amount of Construction Manager 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 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 Construction Manager Work as may be chosen by the Authority may be individually judged as Substantially Complete. In no event shall Substantial Completion be deemed to have occurred until any certificates or licenses required for use of the Construction Manager Work have been delivered to the Authority.

**4.3 Punchlist.** When the Construction Manager considers that the Construction Manager Work, or a portion thereof which the Authority agrees to accept separately, is Substantially Complete for a Phase, the Construction Manager shall prepare and submit to the Authority a comprehensive Punchlist of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the Punchlist. Failure to include an item on the Punchlist does not alter the responsibility of the Construction Manager to complete all Construction Manager Work in accordance with the Contract Documents. The Authority reserves the right to add to the Punchlist within thirty (30) Days after receipt of an acceptable Punchlist from the Construction Manager. Upon receipt of the Construction Manager's Punchlist, the Authority will make an inspection to determine whether the Construction Manager Work or designated portion thereof is Substantially Complete. If the inspection discloses any item, whether or not included on the Construction Manager's Punchlist, 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 Authority. The Construction Manager shall then submit a request for another inspection by the Authority to determine Substantial Completion. When the Construction Manager Work or designated portion thereof is Substantially Complete, the Authority will prepare a Certificate of Substantial Completion for execution by the parties.

**4.4 Final Completion.** Within sixty (60) Days after Substantial Completion, the Construction Manager shall achieve Final Completion of all Construction Manager Work. The date of Final Completion shall establish the start of responsibility under the Agreement for security, maintenance, heat, utilities, damage to the Construction Manager Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Final Completion of the Construction Manager Work or designated portion thereof. The Certificate of Final Completion shall be submitted to the Authority and the Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate. Final Completion of the Construction Manager Work shall not occur until the Construction Manager submits to the Authority (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Construction Manager Work for which the Authority or the Authority's property might be responsible or encumbered have been paid or otherwise satisfied, (b) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Completion is currently in effect and that Construction Manager will give the Authority and Team not be canceled or allowed to expire until at least thirty (30) Days' prior written notice to the Authority and Team before they are allowed to expire or be cancelled except in the event of non-payment of premium, in which case seven (7) Days' prior notice will be provided, (c) a written statement that the Construction Manager knows of no substantial reason that

the insurance will not be renewable to cover the period required by the Contract Documents or the Agreement, (d) consent of surety, if any, to final completion, and (e) if required by the Authority, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, Claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such forms as may be designated by the Authority. If a Lien or Claim for payment relating to the Construction Manager Work remains unsatisfied after Final Completion, the Construction Manager shall pay to the Authority all money that the Authority may be compelled to pay in discharging such Lien or Claim, including all costs and reasonable attorneys' fees.

**4.5 Force Majeure.** If the Construction Manager is delayed in the progress of the Construction Manager Work by events of Force Majeure, fire or other property damage not caused by the Construction Manager or a Subcontractor, Supplier, Sub-subcontractor of any tier, or other Person for whom Construction Manager is legally responsible, unusually severe weather conditions not customarily encountered in the area surrounding the Project which affect the scheduled Critical Path of the Construction Manager Work, or any other cause for which the Construction Manager is not responsible, then the Contract Time, provided for in **Paragraph 4.1** above, shall be extended by a Contract Revision for a reasonable period of time as agreed to by the Authority. No adjustments to the Contract Time are acceptable without the prior written approval of the Authority as a Contract Revision.

**4.6 Contract Time Extensions.** Notwithstanding anything to the contrary in this Agreement, the Construction Manager agrees that, regardless of the cause of delay and whether or not any extension of Contract Time may be granted therefore, Construction Manager shall continue to prosecute all Construction Manager Work not directly affected by said cause of delay and, with respect to such portion or portions of the Construction Manager Work as may be so affected, shall take all reasonable measures to minimize the effect of said cause of delay. All requests for a time extension must be made within twenty-one (21) days of the event allegedly causing the delay. It is a condition precedent to the consideration or prosecution of any Claim for an extension of Contract Time that the foregoing provisions be strictly adhered to in each instance and, if the Construction Manager fails to comply, Construction Manager shall be deemed to have waived the Claim to the extent that proper notice or mitigation would have shortened the period of delay. The Construction Manager further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (a) is not caused, or could not have been reasonably avoided, by the Construction Manager, or (b) could not be reasonably limited or avoided by the Construction Manager's timely notice to the Authority of the delay or reasonable likelihood that a delay will occur.

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

4.8 **Partial Use.** The Authority shall have the right to use, without prejudice to rights of either Party, any completed or Substantially Completed portions of the Construction Manager Work, notwithstanding the fact that time for completion of entire Construction Manager Work, or portions thereof, may not be expired. Use by Authority shall not constitute, in itself, acceptance of the Construction Manager Work.

4.9 **Royalties and Patents.** The Construction Manager shall pay all royalties and license fees. The Construction Manager shall defend suits or claims for infringement of patent rights and shall hold the Authority and all Indemnitees harmless from loss on account thereof.

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

4.10.1 Construction Manager acknowledges and agrees that it has an independent obligation under this Agreement to procure and maintain contractual liability coverage insurance as will insure Construction Manager's obligations in this Paragraph, and further acknowledges that such insurance is commercially available. Construction Manager's liability shall not be limited by the amount or limit of insurance Construction Manager procures to insure its obligations herein. Construction Manager agrees and acknowledges that such contractual liability coverage is for the benefit of the Authority and Indemnitees, but does not require Construction Manager to provide such insurance directly to the Authority and

Indemnitees. In addition to its duties under Paragraph 4.10 herein, the Construction Manager shall defend, indemnify, and hold harmless the Authority and the Indemnitees from and against any and all alleged claims, damages, liabilities, losses and expenses (specifically including reasonable attorneys' fees and costs, court fees and costs, and arbitration fees and costs incurred to defend the Authority and Indemnitees) caused by Construction Manager's breach of this Agreement to the extent finally determined.

4.10.2 The Authority's or an Indemnitee's tender shall not be deemed to require proof of the Construction Manager's breach of contract at the time of tender. In the case of claims against any Party or Person indemnified under this Paragraph 4.18 by an employee of the Construction Manager, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 4.10 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Construction Manager or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

4.10.3 The Construction Manager shall indemnify the Authority, Indemnitees, and the respective directors, officers, agents, and employees of any of them from and against any and all costs and expenses, specifically including reasonable attorneys' fees and costs, court fees and costs, and arbitration fees and costs, incurred by any of the foregoing Parties or Persons to enforce any of the Construction Manager's defense, indemnity, and hold-harmless obligations under this Agreement. The Construction Manager's obligation to defend includes the obligation to provide and pay for attorneys to defend the Party or Persons entitled to indemnification under this Paragraph 4.10, which attorneys shall be subject to the approval of such Party and Persons; and if such Party or Persons do not approve the attorneys provided by the Construction Manager, the Construction Manager shall promptly pay the attorneys' fees incurred by the Party or Persons entitled to indemnification

## **5. Cost of the Work, Fee, GMP Proposal, Guaranteed Maximum Price.**

5.1 Guaranteed Maximum Price Proposal. By the date identified therefor in the Construction Schedule for a Phase, the Construction Manager shall prepare a Phase-specific guaranteed maximum price proposal (the "GMP Proposal") for the Authority's review and approval. The Guaranteed Maximum Price in the proposal shall be the sum of the proposed Cost of the Work and the Construction Manager's Fee for the Work required for the Phase. The Construction Manager shall include with a GMP Proposal a written statement of its basis, which shall include the following:

5.1.1 a list of the documents that constitute the then-current or approved drawings and specifications upon which the GMP Proposal is predicated;

5.1.2 the schedule of values organized by trade categories, allowances, and other items that were taken into account by the Construction Manager in establishing the GMP Proposal;

- 5.1.3 proposed revisions to the Construction Schedule;
- 5.1.4 a list of any allowances included in the GMP Proposal with a written explanation for each;
- 5.1.5 a list of the assumptions and clarifications made by the Construction Manager to which the GMP Proposal shall be subject;
- 5.1.6 a list of any exclusions from the Guaranteed Maximum Price with a written explanation for each;
- 5.1.7 a schedule of applicable alternate prices, if any, and the dates by which same must be elected;
- 5.1.8 a schedule of applicable unit prices;
- 5.1.9 proposed self-performed Work, if any, and related costs and savings;
- 5.1.10 a labor rate schedule;
- 5.1.11 an equipment rental rate schedule;
- 5.1.12 the extent, if any, to which that the Drawings and Specifications are anticipated to require further development (such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order); and
- 5.1.13 a Schedule of Values allocated to various portions of the Construction Manager Work, prepared in such form and supported by such data to substantiate its accuracy as the Authority deems necessary, and which shall be used by the Authority as a basis for reviewing the Construction Manager's Applications for Payment; any Schedule of Values that fails to include sufficient detail, is unbalanced, or exhibits "front-end loading" of the value of the Construction Manager Work may be rejected.

5.2 The Authority shall notify the Construction Manager in writing and within thirty (30) days after the date on which the Authority receives a GMP Proposal for a Phase that the Authority either accepts or rejects that GMP Proposal; provided, however, that the Authority may reasonably extend that thirty (30) day period by giving written notice of such extension to the Construction Manager. If no such election notice is received by the Construction Manager within such period, the Authority shall be deemed to have elected to reject the GMP Proposal. Upon written approval and acceptance of the GMP Proposal for a Phase by the Authority, the Construction Manager is deemed to have guaranteed that the Contract Sum for the Work of that Phase shall not exceed the amount set forth in the GMP Proposal, and that amount will be referred to as the Guaranteed Maximum Price for that Phase, which is only subject to modification in accordance with the terms of the Contract Document. Upon the Authority's acceptance of a GMP Proposal for a Phase, the

Authority shall prepare an amendment (the “Guaranteed Maximum Price Amendment”) to this Agreement for execution by the Authority and the Construction Manager that evidences the Guaranteed Maximum Price for the Phase.

5.3 The Construction Manager shall not incur any cost for the Phase prior to the execution of the Guaranteed Maximum Price Amendment, unless the Authority provides prior written authorization for such costs.

5.4 Construction Manager’s Fee. The “Construction Manager’s Fee” is \_\_\_\_\_.

5.5 The Cost of the Work. The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work for a Phase. The Cost of the Work shall include only the items set forth in Sections 5.5.1 through 5.5.19.

5.5.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Authority’s prior approval, at off-site workshops.

5.5.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Authority’s prior approval.

5.5.3 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work

5.5.4 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

5.5.5 Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

5.5.6 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

5.5.7 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

5.5.8 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools.

5.5.9 Costs of removal of debris from the site of the Work and its proper and legal disposal.

5.5.10 Costs of the Construction Manager's site office, including general office equipment and supplies.

5.5.11 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Authority's prior approval.

5.5.12 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

5.5.13 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Authority's prior approval.

5.5.14 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Authority's prior approval.

5.5.15 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

5.5.16 Fees of laboratories for tests required by the Contract Documents.

5.5.17 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

5.5.18 For purposes of this Section 5.5.18, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

.1 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Authority of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred.

.2 If the Authority, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor.

.3 If the Authority fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party,

5.6 The Cost of the Work shall not include the items listed below:

5.6.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 5.5;

5.6.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Authority has provided prior approval;

5.6.3 Expenses of the Construction Manager's principal office and offices other than the site office;

5.6.4 Overhead and general expenses, except as may be expressly included in Section 5.5;

5.6.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

5.6.6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

5.6.7 Any cost not specifically and expressly described in Section 5.5;

5.6.8 Costs, other than costs included in Change Orders approved by the Authority, that would cause the Guaranteed Maximum Price to be exceeded; and

5.6.9 Costs incurred for a Phase other than the Phase identified in the GMP Amendmet.

## **6. Record Retention, Audit and Claims.**

6.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement and as directed and approved by the Authority. Construction Manager shall afford the Authority reasonable access to appropriate personnel for interviews and the necessary and relevant records, books, cost reports, labor rates, labor schedules, correspondence,

instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda, and other electronic and hard copy data to the extent relating to the Construction Manager's right to payment under and the Construction Manager's compliance with the terms and conditions of this Agreement, and the Construction Manager shall preserve this information for a period of seven (7) years after final payment, or for such longer period as may be required by Applicable Laws. The Construction Manager shall account for and keep track of the Cost of the Construction Manager Work, including all materials, equipment and labor utilized in the performance of the Construction Manager Work, and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Subcontractors retained by the Construction Manager on a "cost- plus" basis shall have the same obligations to retain records and cooperate with audits as are required of the Construction Manager under this **Paragraph 6.1**. In addition to all other rights under the Contract Documents, the Authority and Team representatives shall have the right to conduct full and complete audits of the Construction Manager with respect to the Construction Manager Work and also to the extent relating to the Construction Manager's right to payment under and the Construction Manager's compliance with the terms and conditions of this Agreement. The Construction Manager shall provide the Authority and Team copies of all documents and records associated with the Work that the Authority or Team deem necessary. The Construction Manager shall provide all Subcontracts, material purchase orders, and insurance certificates to the requesting party in an executed format for all Subcontractors and Suppliers prior to any such Person commencing work on the Project.

## 6.2 **Claims and Disputes.**

6.2.1 **Definition.** A "**Claim**" is a demand or assertion by a Person seeking as a matter of right, adjustment or interpretation of terms of an agreement, payment of money, extension of time, or other relief with respect to the terms of the Contract Documents. The term "**Claim**" also includes, without limitation, other disputes and matters in question between the Authority and the Construction Manager or between the Authority and the Architect arising out of or relating to the applicable Contract Documents or Contract Documents. Claims must be made by written notice provided by the claimant to the Party against whom the Claim is being made, with a copy to the Authority. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

6.2.3 **Time Limits on Claims.** Except as provided in Subparagraph 6.2.6 below, and except for Claims asserted by the Authority, Claims by any Person that are discovered during the performance of the Construction Manager Work must be made within twenty-one (21) Days after occurrence of the event giving rise to such Claim or within twenty-one (21) Days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, or said Claim shall be deemed

waived. In addition to the foregoing, as soon as the claimant recognizes the conditions giving rise to the Claim, claimant shall provide notice of such conditions to the Authority, 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 adjusted and dealt with by Contract Revision will not be considered. Claims may also be reserved in writing within the time limits set forth in this Subparagraph 6.2.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in Paragraph 6.3 and Paragraph 6.4 hereof shall not commence until a written notice from the claimant is received by the Authority. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim, and it shall be assumed that the Authority has been prejudiced if it does not receive said information.

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

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

**6.2.6 Claims for Concealed or Differing Site Conditions.** Notwithstanding anything to the contrary in the Contract Documents, the Construction Manager acknowledges and agrees that it has thoroughly investigated the existing design and construction of the Project and the future anticipated construction of the Project, and hereby waives any Claims for conditions encountered at the Project Site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, the design of the Project prepared by the Architect, or existing construction and (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents or the design of the Project

prepared by the Architect. The Construction Manager acknowledges and agrees that this exclusion of Claims for differing site conditions has been specifically negotiated and that the Guaranteed Maximum Price contains an adequate and fair contingency to address this specific risk among others.

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

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

**6.2.9 Claims for Consequential Damages.** Except as provided to the contrary in the Contract Documents, the Construction Manager and the Authority waive Claims against each other for consequential damages arising out of or relating to the Construction Manager Work. This mutual waiver includes:

.1 damages incurred by the Authority for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such Persons; and

.2 damages incurred by the Construction Manager for labor, material, or principal office costs or expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Construction Manager Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 16 below. This Subparagraph 6.2.9 does not apply to or preclude the Authority's right to recover consequential damages to the extent provided below. Notwithstanding anything to the contrary, the Authority does not waive and specifically reserves all rights and claims to recover any and direct damages, indirect damages, incidental damages, consequential, damages incurred by the Authority and Indemnitees, including rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or the services of such Persons, and any other type or form of damages ("Reserved Damages") against the Construction Manager to the extent that such claims for Reserved Damages are due to the need to repair the Construction Manager's improper or defective Construction Manager Work after Substantial Completion or are covered by any insurance available under the Construction Manager's insurance program.

**6.3 Review of Claims and Disputes.** The Authority, will review all Claims once submitted by the Construction Manager and take one or more of the following preliminary actions within ten (10) Days of receipt of a Claim: (a) request additional supporting data from the claimant, (b) submit a schedule to the parties indicating when the Authority expects to take action, (c) reject the Claim in whole or in part, stating reasons for rejection, (d) recommend approval of the Claim, (e) suggest a compromise, or (f) not take any of the above actions, in which case the Claim shall be deemed denied. The Authority may also, but is not obligated to, notify the Construction Manager's surety, if any, of the nature and amount of the Claim. If a Claim submitted to the Authority has been resolved, the Authority will prepare or obtain appropriate documentation to memorialize and process the resolution. If a Claim submitted to the Authority 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, in a timely fashion, notify the parties in writing that the Authority's recommendation will be made within seven (7) Days. Upon expiration of such time period, the Authority will render to the parties its final recommendation relative to the Claim including any change in the Guaranteed Maximum Price or Contract Time or both. The parties may then (a) agree to resolve the Claim or (b) proceed pursuant to **Paragraph 6.4** hereof. If the Authority's recommendation is not submitted within thirty (30) Days of the Authority's receipt of the Claim, the Claim shall be deemed denied.

#### **6.4 Dispute Resolution**

**6.4.1 Mediation.** Claims, disputes, or other matters in controversy arising out of or related to the Construction Manager Work shall be subject to mediation as a condition precedent to binding dispute resolution. The Parties shall submit a written demand for mediation to the Authority, which shall describe in detail the facts and circumstances of the dispute. The Authority shall designate a neutral third-party to serve as mediator. The mediator shall hear the matter in Minneapolis, Minnesota, and provide an informal opinion and advice, none of which shall be binding on the Parties involved in the dispute. The opinion shall be submitted to the parties in dispute within twenty (20) Days of the mediator hearing the dispute. The Parties in dispute will then agree within ten (10) Days to resolve the dispute pursuant to the mediator's advice or submit the matter to arbitration pursuant to

**Subparagraph 6.4.2.** The mediator’s costs shall be shared equally by the Parties in the dispute. The request to mediate may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) Days from the date of filing, unless stayed for a longer period by agreement of the Parties or court Order. If an arbitration is stayed pursuant to this **Subparagraph 6.4.1**, the Parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

**6.4.3 Notice for Arbitration.** Notice of Demand for Arbitration shall be filed, in writing, with the other Party to the applicable agreement, with any Party to be joined pursuant to **Subparagraph 6.4.6** hereof, and with the American Arbitration Association, the Authority, Construction Manager, and the Architect, to the extent they are not otherwise a Party to the arbitration. At the Authority’s election, and its sole discretion, it may invoke application of Fast Track Procedures under the AAA Rules for any such arbitration proceedings initiated under the Contract Documents. The Construction Manager acknowledges and agrees that Minn. Stat. § 544.42 does not apply to this Project.

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

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

**6.4.6 Consolidation or Joinder.** Any arbitration shall include, by consolidation or joinder, the Construction Manager, Architect, Subcontractors, Suppliers, Subconsultants, Construction Managers, and other Persons bound to arbitrate according to this **Paragraph 6.4** if substantially involved in a common question of fact or law. The foregoing agreement to arbitrate and consolidation and joinder shall be specifically enforceable under Applicable Laws in any court having jurisdiction thereof. Any contract between the Construction Manager and any

Subcontractor and Supplier and contracts between Subcontractors and Suppliers and lower tiers of Sub- Subcontractors and suppliers shall include provisions for arbitration, consolidation, and joinder consistent with this **Paragraph 6.4**.

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

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

**6.4.9 Attorneys' Fees and Costs.** If any legal action, litigation or other proceeding, including arbitration, is brought for the enforcement of this Agreement or the Contract Documents and/or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of those 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.

## **7. Changes**

**7.1 Contract Request.** All changes to the Construction Manager Work must be approved in strict accordance with the requirements of this Agreement. No change in the Construction Manager Work, in any form, will be approved without the Construction Manager providing the Authority with all reasonably required documentation, including a properly completed Contract Request Form, which will be provided by the Authority. The Contract Request Form, and all required contractual documentation associated therewith and required by the Authority, must be provided to and approved by the Authority in writing before commencement of any proposed changes in any part of the Construction Manager Work. The Authority will administer a Pending Change Report to identify and track any and all potential changes in the Construction Manager Work, and the Construction Manager is obligated to provide all supporting documentation reasonably required by the Authority to administer the Pending Change Report. The Authority will use the Pending Change Report to provide the Construction Manager with written Notice to Proceed with commencing approved changes, if any, to the Construction Manager Work. The Construction Manager is responsible to immediately provide the Authority with timely

notification of any pending change associated with the Construction Manager Work in accordance with the requirements of this **Paragraph 7.1** and the Contract Documents and to provide projected cost impacts, if any, within five (5) Days of notification of such change. The Construction Manager is responsible to provide final costs associated with any pending change within two (2) weeks of inclusion on the Pending Change Report, or such other timeframe as reasonably agreed to in writing by the Authority. If the Construction Manager performs any alleged change in the Construction Manager Work in the absence of proper notice required by the Contract Documents, the Construction Manager then assumes all liability for such Construction Manager Work, understands and agrees that the Construction Manager will not be paid for such Construction Manager Work, and agrees that the Authority is not obligated to compensate the Construction Manager for such alleged change as a Cost of the Construction Manager Work or as an addition to this Guaranteed Maximum Price.

**7.2 Contract Revision.** A Contract Revision related to the Construction Manager Work is a written order signed by the Authority and Construction Manager, and issued after execution of this Agreement, stating their agreement with respect to a Change in the Construction Manager Work, and which may include an adjustment in the Guaranteed Maximum Price and/or an adjustment to the Construction Schedule or Contract Time. Costs to the Authority resulting from a Change in the Construction Manager Work shall be determined in writing between the Authority and the Construction Manager before issuance of any Contract Revision. The Construction Manager shall not proceed with any Changes in the Construction Manager Work either without a prior written authorization from the Authority, or if the Authority does not consider the Construction Manager Work in question to be a Change in the Construction Manager Work, then without a written notice of Claim as provided herein. The Construction Manager agrees that it will not be paid for and waives any Claim for payment associated with any alleged Change in the Construction Manager Work or any Contract Revision unless the Construction Manager fully complies with the terms of this Agreement. The Construction Manager further assumes any and all risks or liabilities associated with the Construction Manager proceeding with any alleged Change to the Construction Manager Work or any pending Contract Revision that is not administered, or preserved by a written notice of Claim, in strict accordance with the Contract Documents. Except as otherwise set forth therein, any executed Contract Revision shall constitute a final settlement of all matters relating to or arising out of the change in the Construction Manager Work which is the subject of the Contract Revision, including all direct and indirect costs associated with such change and any and all adjustments to the Guaranteed Maximum Price and the Construction Schedule or Contract Time.

**7.3 Construction Change Directive.** A “Construction Change Directive” is a written order prepared by the Authority, directing a change in the Construction Manager Work. The Authority may by Construction Change Directive, without invalidating the Contract Documents, order changes in the Construction Manager Work within the general scope of the Contract Documents consisting of additions, deletions, or other revisions, the Guaranteed Maximum Price and Contract Time being adjusted, if appropriate. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Contract Revision. No adjustment to the Contract Time shall be made or allowed if

the Construction Change Directive does not cause a delay to the Critical Path of the Construction Schedule. If the Construction Change Directive does not provide for an adjustment to the Guaranteed Maximum Price, any adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by efficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;  
or
- .3 actual costs of the Construction Manager Work.

## **8. Subcontractors.**

**8.1 Award of Subcontractors.** Any Subcontractor that the Construction Manager proposes to use to perform a part of the Construction Manager Work shall be subject to the approval of the Authority, which shall not be unreasonably withheld. Before this Agreement is executed, the Construction Manager shall furnish the Authority, in writing, with (a) the name, trade and subcontract amount of all Persons and entities proposed as Subcontractors, and (b) the names of all Persons or entities proposed as Suppliers of the material or equipment identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. The Authority will promptly reply to the Construction Manager in writing stating whether or not the Authority, after due investigation, has reasonable objection to any such proposed person or entity.

**8.2 Subcontract Relations.** Each Subcontract shall obligate the Subcontractor, to the extent applicable to the Construction Manager Work performed by the Subcontractor, to assume toward the Construction Manager and the Authority all the responsibilities, terms and conditions of the Agreement that the Construction Manager assumes toward the Authority. The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents applicable to the Subcontractor's portion of the Construction Manager Work, except Construction Manager may redact pricing and other sensitive information from the copies provided to the Subcontractors.

**8.3 Contingent Assignment of Subcontracts.** Each Subcontract for a portion of the Construction Manager Work is assignable by the Construction Manager to the Authority provided that:

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

8.4 **Authority's Rights to Perform Construction.** The Authority reserves the right to perform construction or operations related to the Project with the Authority's own forces and to award separate Trade Contracts or Vendor Contracts in connection with other portions of the Project or other construction or operations on the Project Site under conditions substantially similar to this Agreement, including those portions related to insurance and waiver of subrogation.

8.5 **Payments to Subcontractors and Suppliers.** Before making payments to any of its Suppliers or Subcontractors, Construction Manager shall obtain lien waivers from all Subcontractors and Suppliers providing services, materials or work to Construction Manager on the Project and representation from said Subcontractors and Suppliers that their work is free and clear of liens, Claims, security interests, or encumbrances. The Construction Manager further expressly undertakes to defend and indemnify the Authority and the Indemnitees, at the Construction Manager's sole expense with independent counsel of the indemnified party's choice, against any actions, lawsuits, or proceedings brought against the Authority or any Indemnitee as a result of Claims or liens filed against the Construction Manager, the Construction Manager Work, the Project Site, any improvements thereon, or any portion of the property of the Authority or any Indemnitee, and the Construction Manager hereby agrees to pay any judgment or Lien resulting from any such actions, lawsuits or proceedings.

## 9. **Coordination with Construction Manager.**

9.1 **Project Schedule.** The Construction Manager will be responsible for coordinating, scheduling, and integrating the Construction Manager Work with the normal operations of the Authority and the Stadium Manager and the work of other Construction Managers hired by the Authority.

9.2 **[RESERVED].**

9.3 **Damage.** The Construction Manager shall promptly remedy, at its own expense, damage caused by the Construction Manager to completed or partially completed construction or to property of the Authority, the Stadium Manager, or work of other Construction Managers or Vendors. The Construction Manager shall reimburse the Authority for costs incurred by the Authority which are payable to other Construction Managers or Vendors because of delays, improperly timed activities, defective Construction Manager Work or other errors or omissions of the Construction Manager.

9.4 **Claims.** Claims and other disputes and matters in question between the Construction Manager and the Construction Manager or Vendor shall be subject to the provisions of **Paragraphs 6.2 - 6.4.**

## 10. **Compliance with Applicable Law.**

10.1 **Equity Plan.** The Construction Manager shall comply with all Applicable Laws and any special requirements in the Contract Documents regarding equal employment opportunity, Targeted Business, and workforce participation initiatives. The Construction Manager shall demonstrate good faith efforts to utilize minority ("MBE") and women-

owned (“**WBE**”) business enterprises (hereinafter referred to as “**Targeted Businesses**”). The Authority may retain the services of a Targeted Business Coordinator to assist with meeting Targeted Business and workforce participation goals. The Construction Manager shall submit to the Authority a Targeted Business Enterprise Participation Plan within ten (10) Days after executing this Agreement. The Authority requires that the Construction Manager utilize good faith efforts to achieve the goals for MBE and WBE participation set forth in the Authority’s Equity Plan for the Construction Manager Work. The Authority also requires that the Construction Manager utilize good faith efforts to achieve the workforce participation goals for minority and women workers regarding the Construction Manager Work. The Authority agrees that it will follow the Equity Plan, which is available on the Authority’s website.

The Construction Manager agrees that the Equity Plan is applicable to its Construction Manager Work and specifically agrees to submit the forms attached hereto as **Exhibit 3** (Targeted Business Commitment and Information Form), **Exhibit 4** (Targeted Business Information Form), and **Exhibit 5** (TCA Equity Plan Progress Report).

The Construction Manager shall utilize the Targeted Business Coordinator to the fullest extent possible to accomplish the following activities:

- .1 Identify the trades, services and suppliers needed for the Construction Manager Work.
- .2 Identify Targeted Businesses that have the resources and capabilities to participate in the Construction Manager Work.
- .3 Contact Targeted Businesses to solicit bids for work on the Construction Manager Work.
- .4 Certify currently uncertified but qualified companies as Targeted Businesses for participation in the Construction Manager Work.
- .5 Develop the Targeted Business Enterprise Participation Plan for submittal with any bid or proposal from a Subcontractor.
- .6 Track participation of Targeted Businesses.
- .7 Prepare Targeted Business participation reports required by the Authority.
- .8 Comply with workforce utilization requirements of the Authority’s Equity Plan for the Construction Manager Work, including requirements established pursuant to Section 17, subd.1 of the Act.

Construction Manager’s failure to use good faith efforts to achieve the Authority’s Targeted Business participation goals or to follow the requirements of the Authority’s Equity Plan for the Construction Manager Work may result in the assessment of appropriate damages.

## 11. Payments.

11.1 **Amount Payable.** The Guaranteed Maximum Price is the maximum total amount payable to the Construction Manager for performance of the Construction Manager Work under the Agreement.

11.2 **Schedule of Values.** Once the Schedule of Values had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve, exclusive of normal retainage, to complete the Construction Manager Work.

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

.1 A current Construction Manager's waiver of lien or claim for payment and duly executed and acknowledged sworn statement showing all Subcontractors and Suppliers with whom the Construction Manager has entered into Subcontracts, the amount of each such Subcontract, the amount requested for any Subcontractor and Supplier in the requested progress payment, and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all such Subcontractors and Suppliers;

.2 Duly executed waivers of liens and claims for payment from all Subcontractors, Suppliers, and lower tier Sub-Subcontractors establishing payment or satisfaction of all amounts requested by the Construction Manager on behalf of such entities or persons in the previous Application for Payment;

.3 Invoices and back-up documentation from any Subcontractor, Supplier, Sub-Subcontractor, or other party to whom the Construction Manager proposes to make payment under that Application for Payment; and

.4 All information and materials required to comply with the requirements of the Contract Documents, requested by the Authority or reasonably requested by any Lender, Lender's representative and any escrow or disbursement agent or title company, if any, retained by the Authority or any Lender to disburse payments.

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

.1 The aggregate cost of materials stored off site shall not exceed ten percent (10%) of the Guaranteed Maximum Price at any time without written approval of the Authority;

.2 Title to such materials shall be vested in the Authority, as evidenced by documentation satisfactory in form and substance to the Authority, including recorded financing statements, UCC filings, and UCC searches;

.3 With each Application for Payment, the Construction Manager shall submit to the Authority a written list identifying each location where materials are stored off the Project Site and the value of materials at each location. Construction Manager shall procure insurance for materials stored off the Project Site in an amount not less than the total value thereof and shall provide satisfactory evidence of such insurance coverage along with the Application for Payment for such materials;

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project Site;

.5 Representatives of the Authority and the Lender's designees shall have the right to make inspections of the storage areas at any time; and

.6 Such materials shall be (a) protected from diversion, destruction, theft, and damage to the satisfaction of the Authority, (b) specifically marked for use in the Construction Manager Work, and (c) segregated from other materials at the storage facility.

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

.1 To the extent of payments received from the Authority, the Construction Manager further expressly undertakes to defend and indemnify the Authority and the Indemnitees, at the Construction Manager's sole expense, with independent counsel of the indemnified party's choice, against any actions, lawsuits, or proceedings brought against the Authority or any Indemnitee as a result of Claims or liens filed against the Construction Manager, the Construction Manager Work, the Project Site, any improvements thereon, or any portion of the property of the Authority or any Indemnitee. To the extent of payments received from the Authority, the Construction Manager hereby agrees to indemnify and hold the Authority and all Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

.2 The Authority shall release any payments withheld due to a Lien if the Construction Manager obtains security acceptable to the Authority or a bond which is: (a) issued by a surety acceptable to the Authority, (b) in form and substance satisfactory to the Authority, and (c) in an amount not less than One Hundred Fifty percent (150%) of such Lien claim. By posting a bond or other acceptable security, however, the Construction Manager shall not be relieved of any responsibilities or obligations under this **Paragraph 11**, including, without limitation, the duty to defend and indemnify the Authority and all Indemnitees. The cost of any premiums incurred in connection with such bonds or security shall be the responsibility of the Construction Manager and shall not be reimbursable.

**11.6 Approval of Applications for Payment.** Based upon Applications for Payment submitted by the Construction Manager and as approved by the Authority, the Authority shall make payment to the Construction Manager. The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month, or as otherwise agreed to between the Authority and Construction Manager in writing. Provided that a Construction Manager Application for Payment is approved for full or partial payment, the Authority shall make payment of the approved amount to the Construction Manager not later than forty-five (45) Days after the Authority has approved Application for Payment. Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Construction Manager and approved by the Authority in accordance with this Agreement. The Application for Payment shall show the percentage

completion of each portion of the Construction Manager Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the percentage of that portion of the Construction Manager Work which has actually been completed. Subject to other provisions of the Agreement, the amount of each progress payment shall be computed as follows:

Determine the portion of the Guaranteed Maximum Price properly allocable to completed Construction Manager Work as determined by the Authority.

Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Construction Manager Work, or, if approved in advance by the Authority, suitably stored off the Project Site at a location agreed upon in writing.

Subtract retainage of five percent (5%). The Authority may in its sole discretion approve any deviation from this requirement.

Subtract the aggregate of previous payments made by the Authority.

Subtract amounts, if any, for which the Authority has reasonably withheld or denied a Construction Manager Application for Payment as provided in the Contract Documents.

The Authority shall pay interest of one and one-half percent (1.5%) per month (or any part of a month) to the Construction Manager on an undisputed amount not paid to the Construction Manager. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Authority shall pay the actual interest penalty due to the Construction Manager in accordance with Minnesota Statutes.

**11.7 Decisions to Withhold Certification.** The Authority may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Authority, if in the Authority's withholding is justified because of:

Defective Construction Manager Work not remedied;

Third-party claims filed or reasonable evidence indicating probable filing of such claims;

Failure of the Construction Manager to properly pay Subcontractors or Suppliers;

Reasonable evidence that the Construction Manager Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price or by the required Contract Time;

Loss or damage incurred by the Authority or another party; or

Persistent failures to carry out the Construction Manager Work in accordance with the Contract Documents.

The Authority shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment pursuant to any provision of the Contract Documents.

**11.8 Joint Payments.** To the extent necessary to protect the Authority from Claims, the Authority may make payment by joint payment to the Construction Manager and the Subcontractors and Suppliers for Construction Manager Work performed by such Subcontractors and Suppliers. Payments by the Authority shall not constitute approval or acceptance of any item of cost in the Application for Payment.

**11.9 Payments to Subcontractors.** If the Authority makes payment directly to the Construction Manager for Construction Manager Work performed by Subcontractors, then the Construction Manager shall promptly pay each Subcontractor, in accordance with the approved Application for Payment submitted by the Construction Manager, on account of such Subcontractor's portion of the Construction Manager Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Subcontractor on account of such Subcontractor's portion of the Construction Manager Work. The Construction Manager must pay any Subcontractor within ten (10) Days of the Construction Manager's receipt of payment from the Authority for undisputed services provided by the Subcontractor. The Construction Manager must pay interest of one and one-half percent (1.5%) per month (or any part of a month) to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Construction Manager shall pay the actual penalty due to the Subcontractor in accordance with Minnesota Statutes. The Construction Manager shall, by appropriate agreement with the Construction Manager and each Subcontractor, require each Subcontractor to make payments to Sub-Subcontractors in similar manner upon receipt of payment from the Construction Manager. The Authority shall have no obligation to pay or to see to the payment of money to a Subcontractor or Supplier.

**11.10 [RESERVED].**

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

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

the Construction Manager reducing the Guaranteed Maximum Price by an amount equal to that to which the Authority is entitled.

**11.13 Advance Payments.** Except with the Authority's prior written approval, the Construction Manager shall not authorize advance payments to Suppliers for materials that have not been delivered to and properly stored at the Project Site.

**11.14 Reliance on Information.** In taking action on the Construction Manager's Application for Payment, the Authority shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Authority has made a detailed examination, audit or arithmetic verification of the documentation submitted by the Construction Manager or other supporting data, that the Authority has made exhaustive or continuous on-site inspections, or that the Authority has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid. If requested by the Authority, the Authority's accounting representative, acting in the sole interest of the Authority, will perform such examinations, audits and verifications.

**11.15 Certifications.** The Construction Manager is required to certify that all amounts owed and requested under the Application for Payment are due to the Construction Manager, are accurate and correct, and that all of the Construction Manager Work completed to the date of the Application for Payment has been completed in accordance with the Agreement. The Construction Manager will be responsible for any errors or inaccuracies in the Application for Payment. The Construction Manager, and all Subcontractors or other Persons included for payment under the Construction Manager's Application for Payment, will be required to certify that they have no Knowledge of any Claims outstanding for any of the Construction Manager Work completed to the date of the Construction Manager's Application for Payment, except those Claims that are properly preserved in strict accordance with the Agreement.

**11.16 Subcontractor Work.** Notwithstanding the provisions of **Paragraph 11.15** and notwithstanding the wording of such certificates, the Construction Manager shall ensure that each Subcontractor's work is satisfactory and in good order pursuant to the Contract Documents pending the issuance of a final Certificate of Payment and the Construction Manager shall be responsible for ensuring that the correction of defects or Construction Manager Work not performed regardless of whether or not such defects were apparent when such certificates were issued.

## **12. Final Completion and Final Payment.**

**12.1 Final Completion.** Upon receipt of written notice that the Construction Manager Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Authority will promptly make such inspection and, when the Authority determines that the Construction Manager Work is acceptable under the Contract Documents, the Construction Manager Work has been fully performed and the Construction Manager has achieved Final Completion, the Authority will issue the final Certificate for Payment stating the entire balance found to be due the Construction Manager

and noted in said final Application for Payment is due and payable. All warranties required under the Agreement shall be provided as part of the final Application for Payment. The final Certificate for Payment will not be issued until all warranties have been received and accepted by the Authority.

**12.2 Final Payment.** Final Payment shall be made by the Authority to the Construction Manager when (a) the Construction Manager has achieved Final Completion, except for the Construction Manager's responsibility to correct defective or nonconforming Work and to satisfy other requirements, if any, which necessarily survive Final Payment; (b) a final Application for Payment has been submitted by the Construction Manager and reviewed by the Authority's accountants; and (c) a final Application for Payment has then been approved in writing by the Authority. The Authority shall make such Final Payment, including any remaining retainage, if all of the Construction Manager's responsibilities have been satisfied (otherwise any remaining retainage shall be released upon satisfaction of all requirements) not more than ninety (90) Days after approval by the Authority of the final Application for Payment, or as required by Applicable Law. No Final Payment shall be issued until all final Contract Revisions have been issued and executed with each final Change Order and Construction Manager has provided the Authority with a detailed list of all Claims that are still unresolved at the time Final Payment is requested. The amount of the Final Payment shall be calculated as follows:

Take the Guaranteed Maximum Price;

Subtract amounts that the Authority withholds in accordance with the Agreement; and

Subtract the aggregate of the previous payments made by the Authority.

### **13. Safety.**

**13.1 Safety Programs.** The Construction Manager shall have a Project Safety Program consistent with the Standard of Care and all applicable requirements set forth herein. The Construction Manager shall also have controlling employer responsibility for the safety programs and precautions applicable to its Construction Manager Work and the activities of other work in areas designated as within the control of Construction Manager. Furthermore, the Construction Manager agrees that the Construction Manager will include reasonable precautions for safety of: (a) its employees on the Project and other Persons who may be affected thereby; and (b) all Project Participants. The Construction Manager will also take reasonable precautions for the protection of the Construction Manager Work, third-party materials and equipment stored on the Project Site in accordance with the Construction Manager's direction, and other property at or on Adjacent Property to the Project Site.

In addition to its defined meaning, for purposes of this **Paragraph 13.1, "Hazardous Materials"** also means any element, compound, mixture, solution, particle or substance which is or may become dangerous, or harmful to the health and the welfare of life or the physical environment if not used, stored or disposed of in accordance with Applicable Laws, including explosives,

petroleum products, radioactive materials, hazardous wastes, toxic substances, any “PCBs” or “PCB items,” as defined in 40 C.F.R. 761.3, and any “asbestos,” as defined in 40 C.F.R. 763.63.

In the event the Construction Manager encounters on the Project Site existing material reasonably believed to be Hazardous Materials which is not part of or a result of the Work and has not been rendered harmless, the Construction Manager shall immediately stop the Construction Manager Work in the area affected and promptly report the condition to the Authority verbally and in writing. The Construction Manager Work in the affected area shall not thereafter be resumed except by written agreement of the Authority, and Construction Manager, if in fact the material is a Hazardous Material and has not been rendered harmless. The Construction Manager Work in the affected area shall be resumed in the absence of Hazardous Materials, or when it has been rendered harmless.

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

The Construction Manager will take, and require its Subcontractors to take, all reasonable precautions for the protection of:

- .1 the Construction Manager Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of the Construction Manager or the Construction Manager’s Subcontractors or Sub- Subcontractors; and
- .2 other property at the Project Site or on Adjacent Property, including the Construction Manager Work, other Construction Manager work, Vendor work, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or placement in the course of construction.

The Construction Manager shall promptly remedy damage and loss to property referred to in **Subparagraphs 13.2.1.1** and **13.2.1.2** hereof caused in whole or in part by the Construction Manager, a Subcontractor, a Sub- Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible under **Subparagraphs 13.2.1.1** and **13.2.1.2**, hereof, except damage or loss attributable to acts or omissions of the Authority, Construction Manager, if any, Stadium Manager, or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager’s obligations under **Paragraph 4.18** hereof.

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

### 13.3 **Emergencies.**

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

In an emergency affecting safety of Persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury, or loss.

## 14. **Construction Manager's Insurance for Purposes of Construction Manager's Work.**

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

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Construction Manager's Work;
- .2 claims for damages because of bodily injury, occupational sickness, disease or death of the Construction Manager's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any Person other than the Construction Manager's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (a) by a Person as a result of an offense directly or indirectly related to employment of such Person by the Construction Manager, or (b) by another Person;
- .5 claims for damages, other than to the Construction Manager Work itself, because of injury to or destruction of tangible and intangible property, including

loss of use resulting therefrom whether or not the tangible or intangible property is physically injured or destroyed;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle or equipment;

.7 to the fullest extent permitted by law, claims involving contractual liability insurance applicable to the Construction Manager's obligations under **Paragraph 4.18** hereof, subject to industry standard policy terms and conditions;

.8 claims for professional liability (errors & omissions) for Construction Manager's professional design services performed as part of the Construction Manager Work; and

.9 claims for damages because of loss of capital equipment and tools that are owned or rented by the Construction Manager or its Subcontractors.

14.1.1 The Construction Manager shall, for the protection and benefit of the Authority and the Indemnitees, procure, pay for and maintain in full force and effect, at all times during the performance of the Construction Manager Work until Final Completion and acceptance of the Construction Manager Work or for such duration thereafter as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Authority and in form and substance reasonably satisfactory to the Authority which afford the coverages set forth in **Appendix B** hereto. The Authority does not in any way represent that the insurance or limits of insurance specified herein are sufficient or adequate to protect the Construction Manager, but are merely minimums. If the Construction Manager procures insurance with limits greater than as the limits specified in **Appendix B**, those greater limits shall apply. In addition to what is specified in this **Paragraph 14** and **Appendix B**, Contractor shall take such steps as it may deem necessary to insure itself against all special and unusual hazards peculiar to this Project.

The costs of all insurance premiums required under this **Paragraph 14.1** and **Appendix B**, shall be included in the calculation of the Guaranteed Maximum Price. The costs of all associated deductibles required under this **Paragraph 14.1** and **Appendix B**, shall be included in the Guaranteed Maximum Price. The Construction Manager hereby agrees to deliver to the Authority within ten (10) Days of the date of this Agreement and prior to any equipment or personnel being utilized in connection with the Project or the Construction Manager Work or brought onto the Project Site, certificates of insurance evidencing the required coverages with limits not less than those specified in **Appendix B**. The receipt by the Authority of such certificates does not constitute approval or agreement by the Authority that the insurance requirements of this Agreement has been met or complied with. The Authority and the Indemnitees shall be included as additional insureds as set forth in **Appendix B**. The Commercial General Liability Policy, Automobile Policy, and Umbrella/Excess Liability Policy obtained under or pursuant to this Paragraph and **Appendix B**, shall each be primary and non-contributory to any valid and collectible insurance carried separately the Authority, or any of the Indemnitees, except for

Builders Risk insurance. Further, the Construction Manager warrants and represents that it will provide that no less than thirty (30) Days' prior written notice to the Authority and the Indemnitees before any material alteration, cancellation, non-renewal or expiration of the coverage to the insurance it obtains pursuant to this **Paragraph 14.1** and **Appendix B**.

In no event shall any approval or lack of approval of insurance or receipt or lack of receipt by the Authority of certificates of policies required under this **Paragraph 14.1** and **Appendix B** or failure to demand receipt of such certificates prior to the Construction Manager commencing the Construction Manager Work be construed as a waiver by the Authority or any of the Indemnitees of the Construction Manager's obligations to obtain insurance pursuant to this **Paragraph 14.1** and **Appendix B**. The obligation to procure and maintain any insurance required by this **Paragraph 14.1** and **Appendix B** is a separate responsibility of the Construction Manager and independent of the duty to furnish a certificate of such insurance policies.

#### 14.1.2 [RESERVED].

Thirty (30) Days prior to the expiration or non-renewal of any insurance required by this **Paragraph 14.1** and **Appendix B**, the Construction Manager shall supply the Authority with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required in this **Paragraph 14.1**. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Construction Manager shall also furnish the Authority with a certified copy of the renewal or replacement policy unless the Authority provides the Construction Manager with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Authority and written by carriers acceptable to the Authority.

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

The Construction Manager shall cause each first-tier Subcontractor to (a) provide insurance in accordance with the terms and conditions of Construction Manager's standard Subcontract and reasonably satisfactory to the Authority, and (b) name the Architect, the Construction Manager, if any, Authority and the Indemnitees as additional insureds under the Subcontractor's Commercial General Liability Policy. The additional insured endorsement included on the Subcontractor's Commercial General Liability Policy shall state that coverage is afforded the additional insured with respect to claims arising out of ongoing and completed operations performed by or on behalf of the Subcontractor. With the exception of any coverage provided under an Authority Controlled Insurance Program, if the additional insureds have other insurance which is applicable to the Project, such other insurance shall be, for the purposes hereof, on an excess or contingent basis. The amount of the insurer's liability under Subcontractor's insurance policy shall not be reduced by the existence of such other insurance.

#### 14.2 Authority's Liability Insurance.

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

Any deductibles required to be paid for claims made by the Construction Manager or Subcontractors against the Authority's liability insurance shall be paid by the claiming Construction Manager or claiming Subcontractor.

#### 14.3 Property Insurance.

Before any portion of the Construction Manager Work is commenced, the Authority shall purchase and maintain property insurance and/or builder's risk insurance in an amount and with coverages to be determined by the Authority for the Construction Manager Work at the Project Site or portions thereof and materials stored off the Project Site or being shipped to the Project Site.

The Authority, Architect, and Construction Manager waive all rights of subrogation and claims of any sort or kind against each other and any of their respective Subconsultants, Subcontractors, Suppliers, Sub-Subcontractors of all tiers, agents, and employees, whether directly or indirectly through any means through their Subconsultants, Subcontractors, Sub-Subcontractors of all tiers, agents, and employees, for loss or damages caused by fire or other named perils to the extent covered by property insurance obtained pursuant to this **Paragraph 14.3** or other property insurance applicable to the Construction Manager Work, except such rights as they have to proceeds of such insurance held by the Authority as fiduciary. The Contract Documents hereby require of the Authority, Architect, and Construction Managers, if any, and their Subconsultants, Subcontractors, Sub-Subcontractors of all tiers, agents, and employees of any of them, by appropriate written agreement, to include similar waivers of subrogation each in favor of other parties enumerated herein. All insurance policies required in the Contract Documents shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a Person even though that Person would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the Person or entity had an insurable interest in the property damaged.

A loss insured under the Authority's property insurance shall be adjusted by the Authority and made payable to the Authority for the benefit of the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. Any costs, including attorneys' fees, involved in adjusting the loss shall be reimbursed to the Authority if not covered by the property insurance. The Construction Manager shall pay Subcontractors their just shares of insurance proceeds received by the Construction Manager, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-Subcontractors in similar manner.

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

Any deductibles required to be paid for Claims made by the Construction Manager or Subcontractors against the Authority's Property and/or Builder's Risk Insurance shall be paid by the claiming Construction Manager or claiming Subcontractor.

#### 14.4 Bonds.

Pursuant to Minnesota Statutes §§ 574.26 - 574.32 and the Act, the Construction Manager is required to provide a Payment Bond and a Performance Bond each in an amount equal to one-hundred percent (100%) of the Guaranteed Maximum Price and in the form of **Exhibit 7** hereto and from a surety or sureties acceptable to the Authority. If after the giving of the bonds the Guaranteed Maximum Price is increased, for any reason, the Authority may require additional bonds, the amount of which shall be not less than the amount of the increase in the Guaranteed Maximum Price, and if the additional bonds are not furnished within ten (10) Days after demand, the Construction Manager Work shall cease until the additional bonds are furnished.

The Payment Bond and Performance Bond shall each comply with the following specific requirements:

.1 [RESERVED]

.2 Bonds shall be executed by a responsible surety licensed and authorized to do business in the State of Minnesota, with a Best's Key Rating Guide's rating of no less than A:X and shall remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Construction Manager Work and the payment of any disputed amounts, whichever time period is longer;

.3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Guaranteed Maximum Price and the Performance Bond shall guarantee Construction Manager will satisfactorily perform each and every part of the Construction Manager Work, including all guarantees and warranties required;

.4 Late completion shall be considered a failure of performance and any liquidated damages owed by the Construction Manager as a result of late completion shall be covered by Construction Manager's performance bond; and

.5 Every Bond under this **Subparagraph 14.4.3** must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:

"Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other Modification of the Contract Documents which, singularly or in the aggregate, does not exceed One Hundred Fifty Percent (150%) of the Guaranteed Maximum Price. Except as to increases in the Guaranteed Maximum Price in excess of the percentage set for the above in this **Subparagraph 14.4.3.5.1**, any other addition, alteration, change, extension of time, or other Modification of the Contract Documents, or a forbearance on the part

of the Authority or the Construction Manager to each other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.

Surety further agrees that in event of any default by the Authority in the performance of the Authority's obligations under the Agreement, the Construction Manager or Surety shall cause written notice of such default, specifying said default in detail, to be given to the Authority, and the Authority shall have thirty (30) Days after the receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) Days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Authority.

Surety agrees that it is obligated under the bonds to the Authority and to any successor, grantee or assignee of the Authority.”

The costs of all bonds required under this **Paragraph 14.4** shall be included in the Guaranteed Maximum Price.

In any Claim involving the surety and the Construction Manager, the surety shall be bound by and agrees to be a Party to the dispute resolution provisions in **Paragraph 6.2 – 6.4** of this Agreement, including arbitration.

#### 14.5 **General Insurance Requirements.**

All insurance coverages required under this **Paragraph 14** shall be provided by insurance companies having policyholder ratings no lower than “A” and financial ratings not lower than “X” in the Best's Key Rating Guide, latest edition in effect as of the date of the respective contracts contemplated hereunder, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

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

#### **14.5.3 - .4 [RESERVED]**

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

All policies, except for the Professional Liability Policy, and Workers Compensation policies (if such waivers are not available), shall be endorsed to provide a waiver of subrogation in favor of the Authority and Indemnitees.

## **15. Uncovering and Correction of Construction Manager Work.**

**15.1 Uncovering of Work.** If a portion of the Construction Manager Work is covered contrary to the Authority's request or needs to be inspected by any Governmental Authority, it will be uncovered for their observation, and be replaced at the Construction Manager's expense without change in the Contract Time or the Guaranteed Maximum Price. If a portion of the Construction Manager Work has been covered which the Authority has not specifically requested to observe prior to its being covered, the Authority may request to see such Construction Manager Work and it shall be uncovered by the Construction Manager. If such Construction Manager Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Contract Revision, be charged to the Authority. If such Construction Manager Work is not in accordance with the Contract Documents, the Construction Manager shall pay such costs.

### **15.2 Correction of Construction Manager Work.**

The Construction Manager shall promptly correct Construction Manager Work rejected by the Authority for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all costs of correcting such rejected Construction Manager Work, including additional Testing and inspections and compensation for the Authority's or a Consultant's services and expenses made necessary thereby and such costs shall not be considered allowable. If prior to the date of Substantial Completion, the Construction Manager, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Construction Manager Work, including, without limitation, mechanical, electrical, plumbing, or other building systems, machinery, or equipment, the Construction Manager shall cause such item to be restored to "like new" condition.

Within one (1) year after the date of Substantial Completion of the Construction Manager Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Agreement, if any of the Construction Manager Work is found to be not in accordance with the requirements of the Agreement, the Construction Manager shall correct it promptly after receipt of written notice from the Authority to do so unless the Authority has previously given the Construction Manager a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Construction Manager Work first performed after Final Completion by the period of time between Final Completion and the actual performance of the Construction Manager Work. This obligation under this **Subparagraph 15.2.2** shall survive Final Completion and acceptance of the Construction Manager Work under the Agreement and termination of the Agreement. The Authority shall provide such notice promptly after discovery of the improper conditions.

If the Construction Manager fails to correct nonconforming Construction Manager Work within a reasonable time, the Authority may correct it. If the Construction Manager does not proceed with correction of such nonconforming Construction Manager Work within a reasonable time fixed by written notice from the Authority, the Authority may remove it and store the salvageable materials or equipment at the Construction Manager's expense. If the Construction Manager does not pay costs of such removal and storage within ten (10) Days after written notice, the Authority may

upon ten (10) additional Days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Construction Manager, including compensation for the Architect's and the Consultant's services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the Construction Manager should have borne, the Guaranteed Maximum Price shall be reduced by the deficiency. If payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Authority.

The Construction Manager shall be responsible for all reasonable and direct costs of the Authority resulting from corrections in the Construction Manager Work for which Construction Manager is responsible and shall be further responsible for any Design Services which are caused or necessitated by errors, omissions, inconsistencies or other damages caused by the Construction Manager and for which the Construction Manager is responsible.

Nothing contained in this **Paragraph 15.2** shall be construed to establish a period of limitation with respect to other obligations that the Construction Manager might have under the Agreement. Establishment of the time period of one (1) year as described in **Subparagraph 15.2.2** relates only to the specific obligation of the Construction Manager to correct Construction Manager Work, and has no relationship to the time within which the obligation of the Construction Manager to comply with the Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to the Construction Manager's obligations other than specifically to correct its Construction Manager Work.

## **16. Termination or Suspension by Authority.**

**16.1 Termination or Completion of the Construction Manager Work by the Authority for Cause.** If the Construction Manager defaults or neglects to carry out the Construction Manager Work in accordance with this Agreement and fails, in the reasonable determination of the Authority, within a seven (7) Day period after receipt of written notice from the Authority to commence and continue correction of such default or neglect with diligence and promptness, the Authority may, without prejudice to other remedies the Authority may have, terminate this Agreement and commence and continue to carry out the Construction Manager Work or terminate the Construction Manager Work. The right of the Authority to terminate this Agreement shall not give rise to any duty on the part of the Authority to exercise this right for the benefit of the Construction Manager.

**16.2 Suspension or Termination by the Authority for Convenience.** The Authority may, in its sole discretion and at any time, suspend or terminate this Agreement for the Authority's convenience and without cause.

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

- .1 cease operations as directed by the Authority in the notice;
- .2 take actions necessary, or that the Authority may direct, for the protection and preservation of the Construction Manager Work; and

.3 except for Construction Manager Work directed to be performed prior to the effective date of suspension or termination stated in the notice, suspend or terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders.

In case of such termination for the Authority's convenience, the Construction Manager shall recover, as its sole remedy, payment for the Construction Manager Work properly performed prior to the effective date of termination and for equipment ordered and not returnable, and proven costs of termination for the Construction Manager such as, for example, restocking charges, non-cancelable material purchase orders, and attributable to the Construction Manager Work actually executed. The Construction Manager hereby waives and releases all other Claims for payment and damages, including anticipated fees, profits or lost overhead for portions of the unperformed Construction Manager Work. The Authority shall be credited for:

.4 payments previously made to the Construction Manager for the terminated portion of the Construction Manager Work;

.5 Claims that the Authority has against the Construction Manager under this Agreement; and

.6 the value of the materials, supplies, equipment, or other items that are to be disposed of by the Construction Manager that are part of the Guaranteed Maximum Price.

## 17. General Provisions.

17.1 **Nondiscrimination.** In connection with the performance of its Construction Manager Work, the Construction Manager agrees not to illegally discriminate against any employee or applicant for employment for any reason, including: age, race, sex, national origin, ancestry, religion, or color. This provision shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.

17.2 **Successors and Assigns.** The Authority and Construction Manager each bind themselves, their partners, successors, permitted assigns, and legal representatives to the other Party to this Agreement and to the partners, successors, permitted assigns, and legal representative of such other Party with respect to covenants of this Agreement. Notwithstanding anything to the contrary in this Agreement, it is acknowledged and agreed that the Authority shall have the right to assign all its rights and duties under this Agreement without the consent of Construction Manager to third parties. The Construction Manager shall execute all consents reasonably required to facilitate such assignment, provided, such assignment by the Authority shall not relieve the Authority of its obligations under this Agreement unless Construction Manager agrees to a novation of the same. This Agreement may not be assigned by Construction Manager without the prior written approval of the Authority, which approval may be withheld in the Authority's sole discretion.

**17.3 Inspection.** Inspection of the progress, quantity, or quality of the Construction Manager Work done by the Authority, any Authority representative, any Governmental Agency, the Architect, or any inspector, shall not relieve the Construction Manager of any responsibility for the compliance of the Construction Manager Work with the Contract Documents. The Authority or its approved representative shall have access to the work site and all Construction Manager Work. No supervision or inspection by the Authority's representative, nor right of the Authority to act, nor shall any other actions taken by the Authority's representative relieve the Construction Manager of any of its obligations under the Contract Documents nor give rise to any duty on the part of the Authority. If any of the Construction Manager Work is required to be inspected or approved by any Governmental Authority, the Construction Manager shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Authority hereunder shall be a waiver of any of the Construction Manager's obligations hereunder or be construed as an approval or acceptance of the Construction Manager Work or any part thereof.

Notwithstanding **Paragraph 17.3**, the Authority will have the right to make specific elections and approve interim and final design elements, including but not limited to, the selection of equipment and the location of the equipment.

**17.4 Claims Against Others Involved With Project.** Should Construction Manager have a Claim against a Person involved with the Project, who is not the Authority or an Indemnitee, then the Construction Manager shall make such Claim directly against such other Person and not against the Authority or any of the Indemnitees.

**17.5 [RESERVED].**

**17.6 Governing Law, Venue, and Jurisdiction.** The laws of the State of Minnesota, without giving any effect to conflicts of law provisions, shall govern and construe this Agreement. Each Party to this Agreement (a) agrees that except for those Claims or disputes which are subject to dispute resolution requirements set forth in **Paragraphs 6.2 to 6.4** of this Agreement, any suit, action, or other legal proceeding arising out of the Construction Manager Work, this Agreement, any related agreements, or any of the transactions contemplated hereby or thereby shall be brought in the courts of the State of Minnesota, Fourth Judicial District, Hennepin County District Court; (b) consents to the jurisdiction of such court in any such suit, action, or proceeding; and (c) waives any objection which it may have to the venue of any such suit, action, or proceeding in such court.

**17.7 [RESERVED].**

**17.8 Warranty.**

The Construction Manager warrants to the Authority that the Construction Manager Work will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Construction Manager Work will be free from defects. The Construction Manager represents and warrants to the Authority that its design and materials and workmanship, including its

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

Construction Manager further warrants that all materials that affect the aesthetics of finishes or equipment of a category or classification will be a product of the same manufacturer and such materials or equipment shall be of the same lot, batch, or type.

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

If to the Authority, addressed to:

Minnesota Sports Facilities Authority  
1005 South 4th Street  
Minneapolis, MN 55415  
Attention: 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 the Construction Manager, addressed to:

[insert]

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

**17.10 Public Project.** The Parties agree and acknowledge that the Project is a public project and the Project will be used for public purposes and all of the Construction Manager Work hereunder is in furtherance of a public project.

**17.11 Prevailing Wages.** Pursuant to Minn. Stat. 177.41 to 177.44, and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties. The applicable prevailing wages as of the date of this Agreement are attached hereto as **Exhibit 9**. The Construction Manager, Subcontractors, and Sub-Subcontractors (of whatever tier) shall pay at least the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay, including any increases in such rates as may be come into force before the Work is complete. The Construction Manager and each Subcontractor and Sub-Subcontractor (of whatever tier) performing work on the Project shall post on site the applicable prevailing wage rates and hourly basic rates of pay for the county or area within which the Project is being performed, including the effective date of any changes thereof, in at least one conspicuous place for the information of the employees working on the Project. The information posted shall include a breakdown of the contributions for health and welfare benefits, vacation benefits, pension benefits and any other economic benefit required to be paid. The Authority demands and the Construction Manager and its Subcontractors and Sub-Subcontractors (of whatever tier) agree to furnish to the Authority copies of any and all payrolls no more than fourteen (14) Days after the end of each pay period and said payrolls shall contain all the data required by Minn. Stat. § 177.30. The Authority may also examine all records relating to wages paid to laborers or mechanics on work to which Minn. Stat. §§ 177.41 to 177.43 apply. The Construction Manager shall include this provision in all subcontracts, of whatever tier, and be responsible for ensuring that it and each Subcontractor and Sub-Subcontractor (of whatever tier) comply with the requirements set forth in this Section. The Construction Manager shall be liable for any damages, losses, penalties, liabilities, or other costs resulting from any failure by it or its Subcontractors or Sub-Subcontractors (of whatever tier) to comply with the requirements of this Section or Section 17.11.1 and shall indemnify and defend the Authority against any damages, losses, penalties, liabilities, investigations, cases, or other costs to the extent they arise from failures by Construction Manager or its Subcontractors or Sub-Subcontractors (of whatever tier) to comply with the requirements of this Section or Section 17.11.1.

**17.11.1** The Construction Manager and its Subcontractors and Sub-Subcontractors (of whatever tier) shall report their payrolls to the Authority using the form provided by the Minnesota Department of Labor and Industry ([http://www.dli.mn.gov/sites/default/files/pdf/pw\\_certified\\_payroll\\_form.pdf](http://www.dli.mn.gov/sites/default/files/pdf/pw_certified_payroll_form.pdf)) or such other form or electronic system as the Authority may direct the Construction Manager and its Subcontractors and Sub-Subcontractors (of whatever tier) to use.

**17.12 Confidentiality.**

The Construction Manager, its employees, Subcontractors, and agents shall keep strictly confidential all Confidential Information concerning and relating to the Agreement and the Project. The Construction Manager, its officers, agents, owners, partners, employees, volunteers, and Subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13 (the “MGDPA”) and all other Applicable Laws relating to data privacy or confidentiality, and as any of the same may be amended. The Construction Manager agrees to defend, indemnify, and hold harmless the Indemnitees from and against any claims resulting from the unlawful disclosure and/or use of such protected data by the Construction Manager or the officers, agents, owners, partners, employees, volunteers, assignees, or Subcontractors of the Construction Manager, or other noncompliance with the requirements of this **Subparagraph 17.12**. The Construction Manager agrees to promptly notify the Authority and Team if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA.

The Construction Manager’s or other Project Team members’ confidentiality and non-disclosure obligations shall survive the expiration or earlier termination of their respective agreements and shall continue for a period of seven (7) years following the expiration of earlier termination of their respective agreements.

#### **17.13 Trade Secrets, Trademarks and Trade Names.**

The Construction Manager, and Project Team acknowledge that the Authority may provide the Construction Manager and Project Team with access to certain information which may qualify as a Trade Secret under Applicable Laws, and the Construction Manager and Project Team agree that for all such Trade Secrets that come into their possession, custody or control: (a) such Trade Secrets shall remain the sole property of the Authority; (b) the Construction Manager and Project Team shall maintain the secrecy of the Trade Secrets for so long as they remain Trade Secrets under Applicable Laws; and (c) immediately upon the expiration or earlier termination of the Project, the Construction Manager and Project Team shall deliver to the Authority all Trade Secret documentation and any and all copies thereof, regardless of form or content.

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

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

#### **17.14 Press Releases and Other Promotional Materials.**

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

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

No signs advertising the services to be performed by the Architect, Construction Manager, or Project Team, or identifying any Person, firm or entity concerned with the Construction Manager Work to be performed by the Architect, Construction Manager, or Project Team shall be allowed at the Project Site or elsewhere unless approved in writing by the Authority in advance, which approval shall be within Authority's sole and exclusive discretion.

#### **17.15 Ownership and Use of Architect's Drawings, Specifications and Other Documents.**

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

**17.16 Third-Party Beneficiaries.** Nothing contained in this Agreement shall create or is intended to create a contractual relationship with, or a cause of action in favor of, any third-

party against the Authority or any of the Indemnitees. Notwithstanding the foregoing, the Parties hereto acknowledge and agree to the third-party beneficiary rights established in Paragraph 17.18 herein.

**17.17 Independent Contractor.** The Construction Manager expressly acknowledges that it is an independent contractor and that it is not the representative or agent of the Authority or Team. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between the Construction Manager and the Authority. The Construction Manager shall have no authority to act on behalf of the Authority. Under no circumstances shall Construction Manager contract, negotiate or make commitments concerning the Project with any Governmental Authority or other authority with jurisdiction over the Project without the Authority's prior written authorization.

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

**18. Entire Agreement.**

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

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[SIGNATURE PAGE FOLLOWS]

**THIS TRADE CONTRACT AGREEMENT** is entered into as of the day and year first written above.

**AUTHORITY:**

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By:  
Title: Its Chair

**AUTHORITY:**

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By:  
Title: Its Executive Director

**CONSTRUCTION MANAGER:**

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By: \_\_\_\_\_

Title: \_\_\_\_\_

**DEFINED TERMS OF BE USED IN THE TERMS OF DESIGN AND CONSTRUCTION  
APPENDIX A**

**DEFINITIONS**

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

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

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

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

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

**“Application for Payment”** shall mean the Construction Manager’s monthly requisition for payment, if any, which shall be submitted on the form provided by the Authority.

**“Architect”** shall mean such design professional firm as may be designated by the Authority, its principals, officers, employees, agents, and the permitted successors and assigns. For the purpose of the Agreement and the Contract Documents, the Construction Manager shall be deemed the Architect of the design/build Construction Manager Work to be performed hereunder.

**“As-Built Drawings”** shall mean CAD generated red-lined Construction Documents showing the Construction Manager Work as constructed, prepared by the Construction Manager and indicating actual locations of utilities and all changes and alterations made to the Construction Manager 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.

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

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

**“Change”** shall mean an agreed-upon and materially significant Modification to the size, quality, or complexity of the Construction Manager Work recognized and allowed by the Agreement that also affects the Guaranteed Maximum Price and Contract Time.

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

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

**“Claim”** shall have the meaning set forth in Subparagraph 6.2.1 of this Agreement.

**“Conceptual Design Documents”** shall mean the preliminary project work plan, programming report and pre-design documents, concept sketches and renderings illustrating the scale and relationship to the components of the Construction Manager Work.

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

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

**“Construction Change Directive”** shall have the meaning ascribed in **Paragraph 7.3** of the Agreement.

**“Construction Documents”** shall mean those deliverables to be provided by the Construction Manager, which are necessary to complete the Construction Manager’s Work, including, but not limited to, the Drawings and Specifications.

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

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

**“Construction Schedule”** shall mean the schedule prepared by a Construction Manager and approved by the Authority, and all adjustments thereto approved by the Authority, that describes the sequence and timing of the Construction Manager Work on the Project.

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

**“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 Construction Manager and the Consultant, and includes all labor, materials, equipment and services to be provided by the Consultant to fulfill its obligations.

**“Consulting Services Agreement”** shall mean a contract between the Authority, the Team or Construction Manager 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 Request Form”** shall mean a form on which changes to the Construction Manager Work or Contract Time are requested or on which approvals to use certain Subcontractors are requested by the Construction Manager.

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

**“Contract Time”** shall be as provided in the Agreement. Adjustments to the Contract Time may include adjustments to the Milestone Dates, the required date of Substantial Completion, or the required date of Final Completion, as applicable and as allowed by the Agreement.

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

**“CPM”** shall mean a Critical Path method format to be used for the Construction Schedule.

**“Critical Path”** shall mean those Construction Manager 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 Construction Manager Work as anticipated on the approved Construction Schedule.

**“Design Development Documents”** shall mean the Drawings, Specifications and other documents prepared by the Construction Manager that establish and describe the size and character of the Construction Manager Work as to architectural, civil, structural, 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.

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

**“Design Documents”** shall mean, collectively and as applicable, the Conceptual Design Documents, Schematic Design Documents, the Design Development Documents and the Construction Documents prepared by the Construction Manager.

**“Design Phases”** shall mean those Phases which are preparatory to the physical construction of the Construction Manager Work 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 Construction Manager Work, and includes all labor, materials, equipment and services to be provided by the Construction Manager to fulfill its obligations under the 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 Construction Manager, and shall include all necessary and appropriate coordination and integration of the Consultant’s Services to allow the Construction Manager to complete the Construction Manager Work in accordance with

the Design Documents. The Design Services shall be performed in strict accordance with all provisions of the Act.

**“Design Services Agreement”** shall mean any Agreement between the Architect and the Authority for design of the Project.

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

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

**“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: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Contamination; and (e) the protection of endangered or threatened species.

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

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

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

**“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, Construction Manager Work, Stadium Site, Adjacent Property, Authority, Consultant, Architect, Subconsultant, Subcontractor, Construction Manager, Vendor City, County, State, and other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project or any Adjacent Property.

**“Governmental Authority(ies)”** shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any

instrumentality of any of them having jurisdiction with respect to the Project, Construction Manager Work, Stadium Site, Adjacent Property, Authority, Consultant, Architect, Subconsultant, Subcontractor, Construction Manager, Vendor, City, County, State, and other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project or any Adjacent Property.

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

**“Guaranteed Completion Date”** is the date identified therefor in the Construction Schedule. .

**“Hazardous Materials”** shall mean: (a) 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; (b) 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; (c) any “hazardous waste” or “hazardous substance” as defined by applicable Minnesota State laws and regulations), as amended, and regulations promulgated thereunder; and (d) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning such waste, substance or material.

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

**“Indemnitees”** shall mean the Minnesota Sports Facilities Authority, Minnesota Vikings Football, LLC, Minnesota Vikings Football Stadium, LLC, Architect, Construction Manager, Lender(s), Stadium Manager, their Affiliated Entities and each of the foregoing Persons’ elected officials, appointed officials, board members, directors, officers, shareholders, subsidiaries, parent companies, members, owners, agents, representatives, 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.

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

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

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

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

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

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

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

**“Notice to Proceed”** shall mean the Authority’s written notice to the

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

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

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

**“Person”** shall mean: (a) 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; (b) any Federal, State, county or municipal government (or any bureau, department, agency or instrumentality thereof); and (c) 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 Construction Manager Work.

**“Project”** shall mean the work provided for in this Agreement and any related work, including design work and work performed under other related Agreements.

**“Project Manual”** shall mean a written volume assembled for the Construction Manager Work by the Construction Manager that includes specific instructions to the Project Team setting forth the requirements, policies and procedures for performance and execution of the Construction Manager’s Design Services and Construction Manager Work.

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

**“Project Safety Program”** shall be developed by Construction Manager pursuant to this Agreement and Terms of Design and Construction.

**“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, including the Architect and its Subconsultants of any tier, Construction Manager, if any, Construction Managers of all tiers contracted directly by the Authority and Consultants contracted directly by the Authority. The Authority must be presented, and asked to provide written approval of, all agreements or contracts, consistent with the terms and conditions of the Contract Documents, with any member of the Project Team before any services or Construction Manager Work is to be provided or performed on the Project by any such member.

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

**“Record Drawings”** shall mean a reproducible set of Construction Documents into which the Architect has incorporated: (a) clarifications, sketches and other Modifications made by the Architect during the Construction Phase; and (b) 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.

**“Required Insurance”** shall mean the insurance required of the Construction Manager pursuant to the Agreement and **Appendix B**.

**“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.

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

**“Scheduled Event”** shall mean any amateur or professional sporting event (other than a NFL game), exhibition, tournament, musical or theatrical performance and other form of live or broadcasted entertainment, convention meeting, market, or show for which (a) the reasonably

expected paid attendance is at least 10,000 Persons and for which tickets or concessions are sold to those attending, or (b) expenses incurred with loss of such Scheduled Event would be at least \$100,000.

“**Scheduled Substantial Completion Date**” is the date identified therefor in the Construction Schedule.

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

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

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

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

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

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

“**Stadium 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 Manager**” shall mean any entity which the Authority has contracted with to manage or operate the Stadium or portions thereof.

“**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 of Care”** in regard to the professional Design Services provided by the Construction Manager 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 systems of similar scope, function, size, quality, complexity and detail, including the design of similar systems for NFL stadiums in comparable urban areas throughout the United States, and further including performance in accordance with Applicable Laws and the NFL Rules and Regulations.

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

**“Subconsultant”** shall mean a Person engaged or to be engaged by the Construction Manager or 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 Work.

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

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

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

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

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

**“Substantial Completion Date”** or **“Date of Substantial Completion”** shall mean the date identified in the Substantial Completion Certificate when the Construction Manager 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.

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

“**Supplier**” shall mean a Person who has an agreement with the 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 Construction Manager Work.

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

“**Targeted Businesses**” shall have the meaning set forth in **Paragraph 10** of the Agreement.

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

“**Termination for Convenience**” shall mean the termination of the Agreement or the Construction Manager Work by the Authority without cause and for the convenience of the Authority as decided in its sole discretion.

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

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

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

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

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

“**Guaranteed Maximum Price**” shall mean the amount identified in a GMP Amendment. .

“**Contract Documents**” shall mean all the design and contract documents prepared by Construction Manager that are necessary to deliver and complete the Construction Manager Work and provide fully functioning facilities that satisfy the Construction Manager’s obligations under the Agreement.

“**Construction Manager**” shall mean a Person that has a direct contract with the Authority to perform a portion of the Project.

**“Construction Manager Work”** shall mean the complete and total construction or performance described in and required by the Contract Documents, including preconstruction and design services and construction services, whether completed or partially completed, and includes all labor, materials, equipment and services required to be provided by the Construction Manager to fulfill Construction Manager’s obligations under the Agreement. The Construction Manager’s Work may constitute the whole or 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.

**“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 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: (a) 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 (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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

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

**INSURANCE PROVISIONS OF THE TERMS OF DESIGN AND CONSTRUCTION**

**APPENDIX B**

**CONSTRUCTION MANAGER’S INSURANCE REQUIREMENTS**

1. For its design and construction work for the Construction Manager Work, the Construction Manager shall, unless otherwise approved in writing by the Authority, obtain and maintain throughout the duration of the Agreement for matters that arise out of or relate to each Phase of the Construction Manager Work (or as otherwise specified) insurance of the minimum types and in the minimum amounts described below (“**Required Insurance**”).

**1.1 Commercial General Liability Insurance.**

**1.1.1 Combined single limit of not less than:**

\$1,000,000	Each Occurrence
\$2,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$100,000	Fire Legal Liability
\$10,000	Medical Payments

**1.1.2 Coverage Required:**

- Per project general aggregate,
- Premises-operations,
- Explosion, collapse, underground,
- Products/completed operations,
- Independent contractor,
- Independent Construction Manager’s Liability,
- Blanket contractual liability, subject to industry standard terms and conditions,
- Personal injury liability,
- Employment Practice Liability (which can be provided through a separate policy)
- Electronic data liability property damage,
- General liability primary (non-contributory),
- Additional insured by endorsement (CG 20 10 10/01 and CG 20 37 10 01 or their equivalent) in a form subject to approval by the Authority including waiver of subrogation in favor of the Authority and the Indemnitees but only as arising out of vicarious liability or warranty liability imposed by law because of the acts, errors, or omissions of the Construction Manager including additional insured coverage for both ongoing and completed operations,

- Supplementary Payments coverage for the benefit of Indemnitees of the Construction Manager for property damage, bodily injury, and personal and advertising injury,
- Construction Manager shall secure such endorsements or estoppel certificates from insurer as may be necessary to confirm that the Agreement is an insured contract for purposes of the policy,
- Designated Construction Project(s) General Aggregate Limit endorsement (CG 25 03 03 97 or its equivalent),
- Operations within 50 feet of railroad,
- Defense in addition to limits of liability,
- Broad form Property Damage coverage,
- Definition of Bodily Injury to include Mental Injury and Mental Anguish,
- Mobile Equipment coverage,
- Liability assumed under an insured contract including the tort liability of another assumed in a business contract,
- Libel, slander, false arrest and invasion of privacy,
- Designated Location(s), and
- Drone liability.

Coverage shall be written on ISO form CG 00 01 12 04 or an equivalent form. Insurance is to be on an occurrence form insuring bodily injury and property damage against the hazards of: construction operations, subcontractor and independent contractor, and shall include an aggregate limit per job site endorsement.

## **1.2 Business Auto Liability Insurance.**

### **1.2.1 Combined Single Limit of:**

\$1,000,000 each Occurrence Bodily Injury and Property Damage

### **1.2.2 Coverage Required:** Primary for all owned automobiles; including liability for all owned, leased, rented, hired/non-owned automobiles; medical payments, uninsured and underinsured motorists coverage. Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or an equivalent form.

The Authority shall be included as additional insured by endorsement in a form subject to approval by the Authority. An MCS-90 endorsement (or its equivalent) shall be attached when operations require this coverage.

## **1.3 Workers' Compensation Insurance.**

### **1.3.1 Workers' Compensation Limits:** Statutory

**1.3.2 Employers' Liability Limits:**

Bodily Injury by Accident	\$1,000,000	Each Accident
Bodily Injury by Disease	\$1,000,000	Policy Limit
Bodily Injury by Disease	\$1,000,000	Each Employee

**1.3.3** Workers Compensation Insurance shall include coverage for Borrowed Servant and Alternate Employer, Voluntary Compensation, unintentional errors or omissions, FELA (in case RR worker/employee injured due to operations of contractor or their agents), The Alternative Employer endorsement shall be attached showing the Authority in the schedule as the Alternate Employer.

**1.3.4** Waiver of Subrogation Endorsement in favor of the Authority.

**1.4 Excess Liability Insurance per Phase with Limits of Not Less Than:**

\$15,000,000	Each Occurrence
\$15,000,000	Aggregate
\$15,000,000	Products/Completed Operations Aggregate

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

**1.5** Builder's Risk. All Risk Form. Builder's Risk coverage at limits determined by the Authority will be provided by the Authority.

If requested, the Construction Manager shall be provided a copy of the Builder's Risk policy before the Construction Phase of the Construction Manager Work begins and the Construction Manager will be named as a loss payee under said policy as its interest may appear at the time of loss.

**1.6 Contractor's Professional and Pollution Liability.**

\$1,000,000	Limit of Insurance
\$1,000,000	Annual Aggregate
\$1,000,000	Contractor's pollution coverage (CPPL)

Coverage shall be maintained uninterrupted for a minimum of twelve years after Substantial Completion. Coverage shall apply to negligent acts, errors or omissions arising from the Construction Manager's professional services defined to include architecture, engineering, land surveying, landscape architecture, and construction management (or other services if appropriate). The retro date will be prior to the

commencement of Construction Manager Work. This coverage must be primary and non-contributory to any coverage maintained by the Authority or an Indemnitee.

**1.7 [RESERVED]**

**1.8 Property Insurance**

Construction Manager shall insure its own property and equipment (owned, rented or borrowed) including but not limited to tools, materials, supplies, equipment, forms, scaffolding towers, staging, bunkhouses, and other temporary structures including their contents, except for such contents as are to be included in and remain a part of the permanent construction. Construction Manager shall require its Subcontractors to similarly insure their property and equipment.

2. The Authority does not represent or warrant that coverage and limits of the Required Insurance will be adequate to protect the Construction Manager, and such coverage and limits shall not be deemed as a limitation on the Construction Manager's liability under the indemnities provided to the Authority and Indemnitees in the Agreement or any other provision of the Contract Documents.
3. The Construction Manager represents and warrants that the coverage and limits of the Required Insurance are the coverage and limits currently maintained by the Construction Manager.
4. Prior to commencing the Construction Manager Work, the Construction Manager shall furnish the Authority with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing that the Construction Manager maintains all Required Insurance.
  - 4.1 All certificates shall contain a provision that coverages afforded under the policies will not be cancelled, non-renewed, materially changed, or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Authority. The Construction Manager shall immediately furnish the Authority copies of all endorsements that are subsequently issued amending coverage or limits.
  - 4.2 The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the cancellation or material change of any insurance referred to therein.
  - 4.3 Failure of the Authority to demand such certificate or other evidence of full compliance with the Required Insurance or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Construction Manager's obligation to maintain such insurance.
5. The Authority shall have the right, but not the obligation, to prohibit the Construction Manager from entering the Project Site until such certificates or other evidence that the

Required Insurance has been duly placed in compliance with this **Appendix B**. The Construction Manager shall be responsible for any delays arising out of the Construction Manager's failure to comply with this **Appendix B**.

6. If the Construction Manager fails to maintain any or all of the Required Insurance, then, in addition to any other rights or remedies available to the Authority under the Agreement, the Authority shall have the right, but shall not be obligated, to (a) terminate the Agreement, or (b) purchase such insurance for the Construction Manager in which event the Construction Manager shall reimburse the Authority or provide for the cost thereof, plus ten percent (10%) as an administrative charge.
7. With respect to the Required Insurance, which the Construction Manager is obligated to maintain after Substantial Completion, an additional certificate(s) evidencing such coverage shall be promptly provided to the Authority when requested.
8. Construction Manager shall provide certificates of insurance evidencing the insurance coverage and policy limits required above prior to commencement of the Construction Manager Work and thereafter shall provide insurance certificates or certified copies of insurance policies as may be specified by the Authority within ten (10) Days of the Authority's written request for said certificates or copies.
9. Construction Manager will require Subcontractors to provide insurance in accordance with the terms and conditions of its standard Subcontract Agreement. Construction Manager shall include the above additional insured and waiver of subrogation requirements in all of its Subcontracts, unless otherwise agreed to in writing by the Authority. The Construction Manager shall be responsible for collecting certificates of insurance and monitoring insurance coverage of its Subcontractors and all lower tier Sub-Subcontractors to verify that the required coverage is maintained as required. All Subcontractors providing professional services shall be required to provide professional liability insurance. In addition, all Subcontractors shall include the same indemnification of the Authority and Indemnitees as provided in the Agreement.
10. Construction Manager shall secure all Required Insurance from domestic insurer(s) authorized to do business in the State of Minnesota and reasonably satisfactory to the Authority with: (a) a claims paying ability of not less than "AA" (or the equivalent) by Standard & Poors and one other Rating Agency satisfactory to the Authority; and (b) "A:X" or better financial strength rating by AM Best. Construction Manager shall promptly notify the Authority of any material changes in coverage for all insurance required herein. All coverages except Professional Liability insurance shall be occurrence based. Insurance shall contain such provisions as the Authority deems reasonably necessary or desirable to protect its interest, including endorsement stating that neither the Construction Manager, the Authority, nor any other party shall be deemed a co-insurer. The Construction Manager shall pay the premiums for all insurance when due and payable.

**EXHIBIT 1**  
**DESCRIPTION OF CONSTRUCTION MANAGER WORK**

The following description is included in the scope of the Construction Manager Work:

The design, work, services, labor, materials, and equipment to be provided by the Construction Manager and its Subcontractors, Suppliers, Consultants and Subconsultants of any tier and associated with the Construction Manager Work for the Project are described below, and it is the intention of the Agreement that the Construction Manager shall provide all design, work, services, labor, materials, and equipment to complete the Construction Manager Work in accordance with the Agreement, including the Contract Documents and all Applicable Laws.

The Construction Manager Work shall include the following, without limitation:

1. **Design Services.**

(a) Construction Manager shall provide Design Services for the Construction Manager Work in a manner consistent with the Standard of Care whether performed by the Construction Manager, its Consultants or any Person engaged directly or indirectly by the Construction Manager. All staff used by the Contractor in the performance of the Design Services under this Agreement shall be qualified by training and experience to perform their assigned tasks. Construction Manager's Design Services shall include usual and customary structural, mechanical and electrical engineering services necessary to complete the Construction Manager Work. Construction Manager represents that it is: (i) knowledgeable of the Applicable Laws in connection with its scope of Design Services under this Agreement, 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 Design Services under this Agreement; and (iii) properly licensed, certified, registered and organized to perform such Design Services under Applicable Laws or any similar requirements.

(b) As part of the consideration contained in the Guaranteed Maximum Price, Construction Manager and its Consultants and sub-Consultants unconditionally and irrevocably transfer and assign to the Authority all rights, title and interest of any kind or nature in and to their respective Design Documents. Construction Manager and its Consultants and sub-Consultants acknowledge and agree that for copyright purposes any Design Documents produced or prepared by Construction Manager and/or its Consultants or sub-Consultants in connection with this Agreement shall be considered works made for hire under Applicable Law, specially ordered or commissioned by the Authority. If, and to the extent that, such Design Documents 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 copyright in all such Design Documents, including the exclusive rights to reproduce, perform and distribute such Design Documents. The Authority shall have the sole right to bring enforcement actions for infringement of any and all such rights, and the Construction Manager and its Consultants and sub-Consultants hereby assign any causes of action that may have accrued

or will accrue with respect to in such documents, materials, trademarks, service marks and copyrights.

## 2. **Construction Services.**

Construction Manager will provide all labor, materials and equipment necessary to survey, design, engineer, fabricate, ship and install the Construction Manager Work.

### **Design**

Construction Manager will provide design services to establish aesthetic and structural specifications for the Construction Manager Work, including required supporting structure and attachment elements. Scope includes all revision and refinement labor time to reach final acceptance and approval by the Authority and Team.

### **Project Management**

Construction Manager will provide dedicated project management staff time from project execution to final punch list and acceptance of completed Construction Manager Work by the Authority and Team. Construction Manager will coordinate all Construction Manager Work with the Authority, Team, Stadium Manager, Construction Manager, if any, Architect, other contractors, and all members of the Project Team.

### **Site Survey and Scope Review**

Before generating any drawings or documents, Construction Manager will conduct a full site survey to confirm that all existing conditions are adequate to meet the design intent. Construction Manager will request and coordinate delivery for its review of drawings or other documentation showing or describing the existing conditions, coordinating trades and proposed work proposed to be provided by others. Any specific structural or other modifications to the Stadium structure will be immediately communicated to the Authority and Team for evaluation.

### **Shop Drawings**

Construction Manager will generate for submittal and approval complete Shop Drawings defining each of the elements of Construction Manager Work to be fabricated and installed by Construction Manager. These Drawings will show the location/placement of each component of the Construction Manager Work and will detail construction methods, “hardening” of components or methods, materials, colors, installation methods, and any applicable coordination information for each element type for its own Construction Manager Work and with the Work of other adjacent contractors. Drawings will be based on existing Design Documents, site survey, and any further information received during the design phases, and as coordinated with the Architect, Authority, and Team. Shop Drawings are required for each component type and include: specially-prepared technical data for this Project, drawings, diagrams, schedules, templates, patterns, instructions, measurements, and similar information not in standard print form.

### **Material/Control Samples**

Construction Manager will submit samples of each material type, and finish and paint color(s), including both fabricated and un-fabricated physical examples of materials, products and units of work. Samples may be both complete units and smaller portions of units of work, either for limited visual inspection or, where indicated, for more detailed testing and analysis.

### **Engineering Calculations**

Engineering calculations will be provided with the Shop Drawings. Engineering calculations will contain information showing that each component and attachment/installation methods will meet the load requirements. Construction Manager will cause all engineered drawings and documents to be prepared and stamped by a Professional Engineer licensed in Minnesota.

### **Mock-ups**

After approval of Shop Drawings and material samples, and only if requested by the Authority and Team, Construction Manager will construct mock-ups to verify constructability of fabricated components and illustrate final product for review by the Authority and Team. Mock-ups will be constructed in the same manner as the final product using the same materials and processes to ensure that the requirements of the project are being met before Construction Manager commences production.

### **Shop Testing**

Fabricated components will be shop tested prior to shipment or delivery to the Project Site.

### **Material Procurement**

The Construction Manager will order and procure materials as required to maintain the Project schedule. If alternate materials are requested by the Authority or Team, Construction Manager will advise of any alleged time impacts.

### **Shipping**

All fabricated components will be crated for shipment to the Project Site or off-site storage in a coordinated sequence to facilitate the installation process. All components will be crated in a manner to prevent any damage during transit or storage.

### **Installation**

Construction Manager will provide onsite installation supervision as required for the unpacking and installation phase of the Construction Manager Work. Construction Manager will protect its Work from public access during construction. Construction Manager will either provide its own safe storage of materials and equipment, toilet facilities, dumpsters/waste removal, and portable cranes, or arrange for the use of the same.

## **Project Closeout**

Construction Manager will prepare and submit all closeout components, including, but not limited to, assembly manuals, maintenance manuals, and closeout package, in printed and PDF format. Documents shall include approved shop drawings annotated with revisions that reflect any changes in the field. Product data are to be provided to the Authority and Team in the form of an Operations and Maintenance Manual. Product data shall include standard printed information on materials, products and systems, including material safety data sheets (MSDS), and not specially prepared for the Construction Manager Work.

## **Scope Components and Descriptions**

## **Optional Alternates**

**EXHIBIT 2**  
**THE CONSTRUCTION SCHEDULE**

**EXHIBIT 3**  
**TARGETED BUSINESS COMMITMENT AND INFORMATION FORM**

[See Next Page]

**AGREEMENT EQUITY PLAN  
TARGETED BUSINESS COMMITMENT AND INFORMATION FORM**

**Proposer Company Name:** \_\_\_\_\_

**Check ONE of the following:**

**No Targeted Business participation is committed on this project**

**The following Targeted Business (MBE & WBE) participation is committed on this project:**

Firm Name (Legal business name used for Targeted Business certification)	WBE MBE (Check one)	How will firm participate? (subcontractor, consortium, joint venture)	Description of work	Estimated dollar value of participation	Estimated percentage of total bid

Total WBE \_\_\_\_%      Total MBE % \_\_\_\_

Use copies of page 1 of this form if additional space is needed to list committed Targeted Businesses and attach such copies to the form.

**On behalf of the Proposer identified below, I certify that:**

**(Check ONE of the following):**

No Targeted Business (MBE or WBE) participation is committed on this project

Proposer is committed to use the Targeted Business contractor(s) listed in this form on this project at the stated percentage(s). I further certify that I have read the Targeted Business requirements found in the Agreement Equity Plan.

I am authorized on behalf of the Proposer to submit this certification to the Minnesota Sports Facilities Authority. This certification is a material representation of fact on which the Authority may rely in awarding the contract.

Proposer Name:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 4**  
**TARGETED BUSINESS INFORMATION FORM**

[See Next Page]

**CONSTRUCTION MANAGEMENT AGREEMENT  
EQUITY PLAN  
TARGETED BUSINESS INFORMATION FORM**

Check ONE of the following:

No Targeted Business will be used by Proposer on this project.

Targeted Businesses are proposed to be used on this project.

The following is:

1) a list of Targeted Businesses proposed to be used on the project AND

2) a list of Targeted Businesses who were considered by the Proposer for the project but were not selected by the Proposer:

**1) TARGETED BUSINESSES PROPOSED TO BE USED ON THE PROJECT:**

Firm Name	Address	Telephone Number

**2) TARGETED BUSINESSES WHO WERE CONSIDERED BUT WERE NOT SELECTED:**

Firm Name	Address	Telephone Number

**CONSTRUCTION MANAGEMENT AGREEMENT**

**EQUITY PLAN  
TARGETED BUSINESS COMMITMENT AND INFORMATION FORM**

**CERTIFICATION**

On behalf of the proposer identified below, I certify that the information provided in this form is true and correct.

\_\_\_\_\_

Proposer Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

**[END OF DOCUMENT]**

Title:

**EXHIBIT 5**  
**CONSTRUCTION MANAGEMENT AGREEMENT**  
**EQUITY PLAN PROGRESS REPORT**

[See Next Page]

### CMA Equity Plan Progress Report

1. Project #:	9. Original Contract Amount:	
2. Project Title:	10. Change Orders to Date:	
3. Construction Trade	11. Revised Contract Amount:	\$0.00
4. Type of Services:	12. Total Earned to Date:	
5. Contract #:	13. Contract Dollars Remaining:	\$0.00
6. Contract Award Date:	14. Amount Paid to Date:	
7. Payment Claim #:	15. Percent Paid to Date:	
8. Progress Report #		

**PROJECT GOAL: 11% WBE 9% MBE      CONTRACT COMMITMENT \_\_\_\_\_ %WBE \_\_\_\_\_ %MBE      \_\_\_\_\_ Interim Report      \_\_\_\_\_ Final Report**  
**Reporting Period: From \_\_\_\_\_ to \_\_\_\_\_**

A) W/MBE Subcontractor (SEE INSTRUCTION 1)	B) \$ Amount of Original W/MBE	C) Non-W/MBE Sub- Contractor	D) \$Amount to Non- W/MBE	E) \$ Amount in Change Orders to W/MBE Contract	F) Total W/MBE Contract \$ Amount	G) \$ Amount to be paid to W/MBE	H) Amount Paid to W/MBE	I) W/MBE %
	\$		\$	\$	\$	\$	\$	\$

Total W/MBE Contract \$ Amount as % of Total Contract Amount (11)

\$ Amount Paid to W/MBE to Date as % of Total Contract Amount Paid to Date (14)

Explanation if W/MBE Goal Not Being Met or Other Comments:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Instructions:

1. List each W/MBE Subcontractor only once. Insert appropriate information in columns A), B), E), G), and H)
2. Complete columns C) and D) only for each non-W/MBE Subcontractor hired by the W/MBE Subcontract
3. Column D) shall include all W/MBE Change Order amounts passed along to non-W/MBE

**Authority Representative Signature:** \_\_\_\_\_

**EXHIBIT 6**  
**CONSTRUCTION SCHEDULE**

**EXHIBIT 7**  
**BONDS**

The Payment and Performance Bond forms that the Construction Manager is required to provide related to its Construction Manager Work are attached as **Exhibit 7**.

[See Next Page]

**CONSTRUCTION MANAGER PERFORMANCE BOND**

Bond No. \_\_\_\_\_

**KNOW ALL PERSONS BY THESE PRESENTS:**

**That** \_\_\_\_\_  
*(Here insert full name and address of Construction Manager)*

as Principal, hereinafter called Construction Manager,

**and,** \_\_\_\_\_  
*(Here insert full name and serving address of Surety)*

as Surety, hereinafter called Surety, are held and firmly bound unto **Minnesota Sports Facilities Authority, 1005 4th Street South, Minneapolis, MN 55415** (the "Authority"), hereinafter called Obligee, in the amount of \_\_\_\_\_

(\$ \_\_\_\_\_), (the "Bond Sum") for the payment whereof Construction Manager and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns firmly by these presents.

WHEREAS, Construction Manager has, by written agreement dated as of [insert] , entered into an Agreement with Obligee, hereinafter called Contract, for,

**(Here insert name and location of the project and Contract number or general description of the work)**

which Contract is by reference made a part hereof.

NOW THEREFORE, Construction Manager and Surety, jointly and severally, hereby bind themselves, their heirs, executors, administrators, successors and assigns by this Bond, as provided herein, inclusive of all the provisions set forth above and below.

THE CONDITION OF THIS BOND is such that, if Construction Manager shall satisfactorily perform each part of the Contract and any warranties and guaranties required under the Contract, then this Bond shall be null and void; otherwise it shall remain in full force and effect, inclusive of all the prior recitals and the following terms which are herein incorporated.

Whenever Construction Manager shall be, and is declared by Obligee to be in default under the Contract, Obligee having performed Obligees obligations thereunder, Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions; or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if Obligee elects, upon determination by Obligee and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Obligee, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract's Guaranteed Maximum Price; but not exceeding, including other costs and damages for which Surety may be liable hereunder, the Bond Sum. The term "cost of completion" includes, without limitation, responsibilities of Construction Manager for correction of defective work and completion of the Contract, Obligees legal and design professional costs resulting from Construction Manager's default, and all damages recoverable under the Contract, including delay damages.

The term "balance of the Contract's Guaranteed Maximum Price, shall mean the total amount payable by Obligee to Construction Manager under the Contract and any amendments thereto, less the amount paid by Obligee to Construction Manager.

Any suit or arbitration under this Bond must be instituted before the expiration of the time in which suits or arbitrations may be brought under the Contract by Obligee in the jurisdiction where the Contract is to be performed, such period to be computed from the later of (1) the date of Construction Manager's default; or (2) the date Surety refuses or fails to perform its obligations under this Bond, or (3) the date of Substantial Completion of the Project as established by the Contract.

Surety shall save Obligee harmless from all costs and charges, up to the amount of the Bond Sum, that may accrue to complete the Work of the Contract following the default of the Construction Manager. Surety shall not be liable to Obligee in excess of the Bond Sum, as such Bond Sum may be adjusted as provided in the Contract and herein. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Surety's obligations shall include, up to the Bond Sum, payment for liquidated delay damages owed under the Contract by Construction Manager to Authority as a result of late completion as provided for in, or governed by, the Contract.

Terms capitalized herein but not defined in this Bond shall have the meaning assigned to them as noted in the Contract.

This Bond shall remain in effect for the longer period of time in which an action may be maintained under the Contract or under Minn. Stat. §574.31, sub 1, as may be amended or succeeded from time to time.

Surety further agrees that in event of any default by the Authority in the performance of the Authority's obligations to the Construction Manager under the Contract, the Construction Manager or Surety shall cause written notice of such default, specifying said default in detail, to be given to the Authority. Such notice of default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Authority.

Surety agrees that it is obligated under the bonds to the Authority and to any successor, grantee or assignee of the Authority.

In any claim involving the Obligee, Surety and the Construction Manager, the Surety shall be bound by and agrees to be a party to the dispute resolution provisions in the Contract, including any arbitration provision therein, and agrees Obligee has the right to join Surety by consolidation or joinder in any other related arbitration with persons bound to arbitrate with the Obligee. The foregoing agreement to arbitrate and consolidate and joinder shall be specifically enforceable under Applicable Laws in any court having jurisdiction thereof.

Signed and acknowledged and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
(Construction Manager as Principal)

\_\_\_\_\_  
(Surety) (Seal)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(Construction Manager signature must be notarized)  
notarized)

(Surety signature must be

(Bond must be accompanied by a notarized  
power of attorney authorizing the above  
signature on behalf of Surety)

Name and servicing address of agent of Surety:

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**

State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by the authority of its Board of Directors, and that said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public: \_\_\_\_\_  
County: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**SURETY ACKNOWLEDGMENT**

State of Minnesota            )  
  )ss  
County of Hennepin         )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me appeared \_\_\_\_\_, to me personally known, who being by me sworn, did say that (s)he is the Attorney-in Fact of \_\_\_\_\_, a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was executed in behalf of said corporation by authority of its Board of Directors; and that said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

Notary: \_\_\_\_\_

County: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**CONSTRUCTION MANAGER LABOR AND MATERIAL PAYMENT BOND**  
**THIS BOND, ISSUED SIMULTANEOUSLY WITH A PERFORMANCE BOND, RUNS**  
**IN FAVOR OF OBLIGEE AND CLAIMANTS**

Bond No. \_\_\_\_\_

**KNOW ALL PERSONS BY THESE PRESENTS:**

That \_\_\_\_\_  
*(Here insert full name and address of Construction Manager)*  
as Principal, hereinafter called Construction Manager,

and, \_\_\_\_\_  
*(Here insert full name and serving address of Surety)*

as Surety, hereinafter called Surety, are held and firmly bound unto **Minnesota Sports Facilities Authority, 1005 4th Street South, Minneapolis, MN 55415** (the "Authority"), hereinafter called Obligee, in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (the "Bond Sum") for the payment whereof Construction Manager and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns firmly by these presents.

WHEREAS, Construction Manager has, by written agreement dated as of \_\_\_\_\_, entered into an Agreement with Obligee, hereinafter called Contract, for \_\_\_\_\_

*(Here insert name and location of the project and Contract number or general description of the work)*  
which contract is by reference made a part hereof.

NOW THEREFORE, Construction Manager and Surety, jointly and severally, hereby bind themselves, their heirs, executors, administrators, successors and assigns to Obligee to pay for costs for **work, skill, tools, machinery, materials, insurance premiums, equipment or supplies or taxes incurred under Minn. Stat. §290.92, Chapter 268 or Chapter 297A** (the underline portion hereof referred to as "labor, materials, or equipment") provided to Obligee by Construction Manager for use in the performance of the Contract.

1. A Claimant is defined as an individual or entity who provides labor, materials or equipment for the performance of the Contract and who further: (a) provides such labor, materials or equipment pursuant to a direct contract with Trade Contractor; (b) would otherwise be able to assert a mechanic's lien for such labor, materials or equipment in the jurisdiction where such labor, materials or equipment were provided; or (c) has rights, directly or indirectly, arising out of the provision of such labor, materials or equipment against Trade Contractor or Surety under Minnesota law, if any.

2. Trade Contractor and Surety hereby jointly and severally agree that every Claimant as herein defined, who has not been paid in full before the expiration of a period of one hundred twenty (120) days after the date on which the last of such Claimant's completion, delivery or provision of labor, materials or equipment for the Project, or within such other limitations of time may be imposed by Minn. Stat. § 574.31, as may be amended or succeeded from time to time, may sue on this Bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. Obligor shall not be liable for the payment of any costs or expenses, including attorneys' fees, of any such suit.

3. No suit or action shall be commenced hereunder by any Claimant:

a) Unless Claimant shall have given written notice, as provided for in Minn. Stat. §574.31, to Trade Contractor, Obligor and Surety, within one hundred twenty (120) days after such Claimant's completion, delivery or provision of labor, materials or equipment for the Project, or within such other limitations of time may be imposed by Minn. Stat. § 574.31, as may be amended or succeeded from time to time, stating with substantial accuracy the nature and amount of its claim and the name of the party to whom such labor, materials or equipment were provided, or for whom such labor, materials or equipment was done or performed, and the date Claimant last completed, delivered or provided such labor, materials or equipment for the Project. Such notice shall be served by personal delivery or certified mail, postage prepaid, and in either case addressed to Trade Contractor and Surety, at either their addresses listed on this bond or any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the Project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Claimant last completed, delivered or provided labor, materials or equipment for the Project as stated in its claim required above, it being understood, however, that if any limitation or procedure embodied in this Bond is prohibited by any law controlling the construction *hereof*, such limitation or procedure shall be deemed to be amended so as to be equal to the minimum period of limitation or procedure permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. Surety shall not be liable to Obligor or Claimants in excess of the Bond Sum, as such Bond Sum may be adjusted as provided herein. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

Terms capitalized herein but not defined in this Bond shall have the meaning assigned to them as noted in the Contract.

Surety further agrees that in event of any default by the Authority in the performance of the Authority's obligations to the Trade Contractor under the Contract, the Trade Contractor or Surety shall cause written notice of such default, specifying said default in detail, to be given to the Authority. Such notice of default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Authority.

Surety agrees that it is obligated under the bonds to the Authority and to any successor, grantee or assignee of the Authority.

In any claim involving Claimant, the Surety and the Trade Contractor, the Surety shall be bound by and agrees to be a party to the dispute resolution provisions in the applicable contract between the Trade Contractor and the Claimant.

Signed and acknowledged and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(Construction Manager as Principal)

\_\_\_\_\_  
(Surety) (Seal)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(Construction Manager signature must be notarized) (Surety signature must be notarized)  
(Bond must be accompanied by a notarized power of attorney authorizing the above signature on behalf of Surety)

Name and Servicing address of agent of Surety:

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**

State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by the authority of its Board of Directors, and that said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public: \_\_\_\_\_

County: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**SURETY ACKNOWLEDGMENT**

State of Minnesota            )  
  )ss  
County of Hennepin         )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who being by me sworn, did say that (s)he is the Attorney-in Fact of \_\_\_\_\_, a corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was executed in behalf of said corporation by authority of its Board of Directors; and that said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

Notary: \_\_\_\_\_

County: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT 8  
WARRANTY**

The following Warranty is included in this Agreement as Exhibit 8.

**WARRANTY**

Pursuant to the Agreement between the Minnesota Sports Facilities Authority (“**Authority**”) and \_\_\_\_\_ (“**Construction Manager**”), Construction Manager hereby warrants and guarantees that all of the Construction Manager Work performed under the Agreement will be of new and of good quality, will be free of defects except for those inherent in the quality of the Construction Manager Work allowed by the Contract Documents, and will conform to the requirements of the Contract Documents (“**Warranty**”). If the Construction Manager Work does not conform to this Warranty, it shall be considered defective, and Construction Manager shall remedy at its own expense any such defective Construction Manager Work (including the costs that the Authority or Architect incur in dealing with or as a result of the defective Construction Manager Work) so that the Construction Manager Work conforms to the Contract Documents. The Construction Manager’s Warranty shall extend for a period of one (1) year after final acceptance by Authority. Where guarantees or warranties are required in the Contract Documents for a period of more than one (1) year, such longer terms shall apply. All Suppliers’ warranties and guarantees, express or implied, respecting any part of the Construction Manager Work and any materials used therein are hereby assigned by the Construction Manager to the Authority. This Warranty shall supplement, and not supersede, warranties and guarantees given by Construction Manager under the terms of the Contract Documents.

CONSTRUCTION MANAGER:

WITNESS: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
SEAL

\_\_\_\_\_  
MY TERM EXPIRES

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**EXHIBIT 9**  
**PREVAILING WAGES**

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MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY PREVAILING WAGES FOR STATE FUNDED CONSTRUCTION PROJECTS



THIS NOTICE MUST BE POSTED ON THE JOBSITE IN A CONSPICUOUS PLACE

**Construction Type: Commercial**

**County Number: 27**

County Name: HENNEPIN

Effective: 2021-12-27 Revised: 2022-01-31

This project is covered by Minnesota prevailing wage statutes. Wage rates listed below are the minimum hourly rates to be paid on this project.

All hours worked in excess of eight (8) hours per day or forty (40) hours per week shall be paid at a rate of one and one half (1 1/2) times the basic hourly rate. *Note: Overtime pay after eight (8) hours on the project must be paid even if the worker does not exceed forty (40) hours in the work week.*

Violations should be reported to:

Department of Labor and Industry  
 Prevailing Wage Section  
 443 Lafayette Road N  
 St Paul, MN 55155  
 (651) 284-5091  
[DLI.PrevWage@state.mn.us](mailto:DLI.PrevWage@state.mn.us)

\* Indicates that adjacent county rates were used for the labor class listed.

**County: HENNEPIN (27)**

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE	
<b>LABORERS (101 - 112) (SPECIAL CRAFTS 701 - 730)</b>					
101	LABORER, COMMON (GENERAL LABOR WORK)	2021-12-27	38.06	21.84	59.90
102	LABORER, SKILLED (ASSISTING SKILLED CRAFT JOURNEYMAN)	2021-12-27	38.06	21.84	59.90
103	LABORER, LANDSCAPING (GARDENER, SOD LAYER AND NURSERY OPERATOR)	2021-12-27	25.75	18.70	44.45
		2022-05-01	26.89	19.31	46.20
104	FLAG PERSON	2021-12-27	38.06	21.84	59.90
105*	WATCH PERSON	2021-12-27	34.43	21.49	55.92
106*	BLASTER	2021-12-27	35.11	19.64	54.75

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE	
107	PIPELAYER (WATER, SEWER AND GAS)	2021-12-27	39.00	21.84	60.84
		2022-05-01	40.50	22.39	62.89
108	TUNNEL MINER	2021-12-27	37.00	21.84	58.84
		2022-05-01	38.50	22.39	60.89
109	UNDERGROUND AND OPEN DITCH LABORER (EIGHT FEET BELOW STARTING GRADE LEVEL)	2021-12-27	37.00	21.84	58.84
		2022-05-01	38.50	22.39	60.89
110	SURVEY FIELD TECHNICIAN (OPERATE TOTAL STATION, GPS RECEIVER, LEVEL, ROD OR RANGE POLES, STEEL TAPE MEASUREMENT; MARK AND DRIVE STAKES; HAND OR POWER DIGGING FOR AND IDENTIFICATION OF MARKERS OR MONUMENTS; PERFORM AND CHECK CALCULATIONS; REVIEW AND UNDERSTAND CONSTRUCTION PLANS AND LAND SURVEY MATERIALS). THIS CLASSIFICATION DOES NOT APPLY TO THE WORK PERFORMED ON A PREVAILING WAGE PROJECT BY A LAND SURVEYOR WHO IS LICENSED PURSUANT TO MINNESOTA STATUTES, SECTIONS 326.02 TO 326.15.	2021-12-27	38.06	21.84	59.90
111	TRAFFIC CONTROL PERSON (TEMPORARY SIGNAGE)	2021-12-27	38.06	21.84	59.90
<b>SPECIAL EQUIPMENT (201 - 204)</b>					
201	ARTICULATED HAULER	2021-12-27	41.73	22.85	64.58
202*	BOOM TRUCK	2021-12-27	41.73	22.85	64.58
203	LANDSCAPING EQUIPMENT, INCLUDES HYDRO SEEDER OR MULCHER, SOD ROLLER, FARM TRACTOR WITH ATTACHMENT SPECIFICALLY SEEDING, SODDING, OR PLANT, AND TWO-FRAMED FORKLIFT (EXCLUDING FRONT, POSIT-TRACK, AND SKID STEER LOADERS), NO EARTHWORK OR GRADING FOR ELEVATIONS	2021-12-27	25.75	18.70	44.45

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE	
	2022-05-01	26.89	19.31	46.20	
204*	OFF-ROAD TRUCK	2021-12-27	41.73	22.85	64.58
205	PAVEMENT MARKING OR MARKING REMOVAL EQUIPMENT (ONE OR TWO PERSON OPERATORS); SELF-PROPELLED TRUCK OR TRAILER MOUNTED UNITS.	2021-12-27	37.05	19.39	56.44
<b>HIGHWAY/HEAVY POWER EQUIPMENT OPERATOR</b>					
<b>GROUP 2</b>		2021-12-27	40.24	21.55	61.79
306	GRADER OR MOTOR PATROL				
308	TUGBOAT 100 H.P. AND OVER WHEN LICENSE REQUIRED (HIGHWAY AND HEAVY ONLY)				
<b>GROUP 3</b>		2021-12-27	40.34	22.55	62.89
		2022-05-02	41.59	23.45	65.04
309	ASPHALT BITUMINOUS STABILIZER PLANT				
310	CABLEWAY				
312	DERRICK (GUY OR STIFFLEG)(POWER)(SKIDS OR STATIONARY) (HIGHWAY AND HEAVY ONLY)				
314	DREDGE OR ENGINEERS, DREDGE (POWER) AND ENGINEER				
316	LOCOMOTIVE CRANE OPERATOR				
320	TANDEM SCRAPER				
322	TUGBOAT 100 H.P AND OVER (HIGHWAY AND HEAVY ONLY)				
<b>GROUP 4</b>		2021-12-27	40.04	22.55	62.59
		2022-05-02	41.29	23.45	64.74
323	AIR TRACK ROCK DRILL				
324	AUTOMATIC ROAD MACHINE (CMI OR SIMILAR) (HIGHWAY AND HEAVY ONLY)				
325	BACKFILLER OPERATOR				
327	BITUMINOUS ROLLERS, RUBBER TIERED OR STEEL DRUMMED (EIGHT TONS AND OVER)				
328	BITUMINOUS SPREADER AND FINISHING MACHINES (POWER), INCLUDING PAVERS, MACRO SURFACING AND MICRO SURFACING, OR SIMILAR TYPES (OPERATOR AND SCREED PERSON)				
329	BROKK OR R.T.C. REMOTE CONTROL OR SIMILAR TYPE WITH ALL ATTACHMENTS				
330	CAT CHALLENGER TRACTORS OR SIMILAR TYPES PULLING ROCK WAGONS, BULLDOZERS AND SCRAPERS				
331	CHIP HARVESTER AND TREE CUTTER				
332	CONCRETE DISTRIBUTOR AND SPREADER FINISHING MACHINE, LONGITUDINAL FLOAT, JOINT MACHINE, AND SPRAY MACHINE				
334	CONCRETE MOBIL (HIGHWAY AND HEAVY ONLY)				

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
335				
336				
337				
338				
340				
341				
345				
347				
348				
349				
350				
352				
354				
356				
357				
359				
360				
361				
362				
363				
365				
367				
<b>GROUP 5</b>	2021-12-27	35.85	21.55	57.40
370				
371				
372				
375				
376				
377				
379				
381				
382				
383				
384				
385				
<b>GROUP 6</b>	2021-12-27	35.79	22.55	58.34

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
	2022-05-02	37.04	23.45	60.49
387	CAT, CHALLENGER, OR SIMILAR TYPE OF TRACTORS, WHEN PULLING DISK OR ROLLER			
389	DREDGE DECK HAND			
391	GRAVEL SCREENING PLANT (PORTABLE NOT CRUSHING OR WASHING)			
393	LEVER PERSON			
395	POWER SWEEPER			
396	SHEEP FOOT ROLLER AND ROLLERS ON GRAVEL COMPACTION, INCLUDING VIBRATING ROLLERS			
397	TRACTOR, WHEEL TYPE, OVER 50 H.P., UNRELATED TO LANDSCAPING			

#### COMMERCIAL POWER EQUIPMENT OPERATOR

<b>GROUP 1</b>	2021-12-27	45.24	22.85	68.09
501	HELICOPTER PILOT (COMMERCIAL CONSTRUCTION ONLY)			
502	TOWER CRANE 250 FEET AND OVER (COMMERCIAL CONSTRUCTION ONLY)			
503	TRUCK CRAWLER CRANE WITH 200 FEET OF BOOM AND OVER, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)			
<b>GROUP 2</b>	2021-12-27	44.90	22.85	67.75
504	CONCRETE PUMP WITH 50 METERS/164 FEET OF BOOM AND OVER (COMMERCIAL CONSTRUCTION ONLY)			
505	PILE DRIVING WHEN THREE DRUMS IN USE (COMMERCIAL CONSTRUCTION ONLY)			
506	TOWER CRANE 200 FEET AND OVER (COMMERCIAL CONSTRUCTION ONLY)			
507	TRUCK OR CRAWLER CRANE WITH 150 FEET OF BOOM UP TO AND NOT INCLUDING 200 FEET, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)			
<b>GROUP 3</b>	2021-12-27	43.49	22.85	66.34
508	ALL-TERRAIN VEHICLE CRANES (COMMERCIAL CONSTRUCTION ONLY)			
509	CONCRETE PUMP 32-49 METERS/102-164 FEET (COMMERCIAL CONSTRUCTION ONLY)			
510	DERRICK (GUY & STIFFLEG) (COMMERCIAL CONSTRUCTION ONLY)			
511	STATIONARY TOWER CRANE UP TO 200 FEET			
512	SELF-ERECTING TOWER CRANE 100 FEET AND OVER MEASURED FROM BOOM FOOT PIN (COMMERCIAL CONSTRUCTION ONLY)			
513	TRAVELING TOWER CRANE (COMMERCIAL CONSTRUCTION ONLY)			
514	TRUCK OR CRAWLER CRANE UP TO AND NOT INCLUDING 150 FEET OF BOOM, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)			
<b>GROUP 4</b>	2021-12-27	43.15	22.85	66.00
515	CRAWLER BACKHOE INCLUDING ATTACHMENTS (COMMERCIAL CONSTRUCTION ONLY)			
516	FIREPERSON, CHIEF BOILER LICENSE (COMMERCIAL CONSTRUCTION ONLY)			
517	HOIST ENGINEER (THREE DRUMS OR MORE) (COMMERCIAL CONSTRUCTION ONLY)			
518	LOCOMOTIVE (COMMERCIAL CONSTRUCTION ONLY)			

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
519				
520				
<b>GROUP 5</b>	2021-12-27	41.73	22.85	64.58
521				
522				
523				
524				
525				
526				
527				
528				
529				
530				
531				
532				
533				
534				
<b>GROUP 6</b>	2021-12-27	40.22	22.85	63.07
535				
536				
537				
538				
539				
540				
<b>GROUP 7</b>	2021-12-27	39.10	22.85	61.95
541				
542				
543				
544				
545				
546				
547				
<b>GROUP 8</b>	2021-12-27	37.09	22.85	59.94

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
548				
549				
550				
<b>TRUCK DRIVERS</b>				
<b>GROUP 1 *</b>	2021-12-27	39.19	21.34	60.53
601				
602				
603				
<b>GROUP 2 *</b>	2021-12-27	21.10	6.76	27.86
604				
<b>GROUP 3 *</b>	2021-12-27	22.50	6.50	29.00
605				
606				
607				
<b>GROUP 4</b>	2021-12-27	35.82	8.18	44.00
608				
609				
610				
611				
612				
613				
614				
615				
616				
<b>SPECIAL CRAFTS</b>				
701	2021-12-27	47.79	28.51	76.30
	2022-06-13	50.04	28.51	78.55
702	2021-12-27	40.94	29.28	70.22
	2022-01-01	42.64	29.28	71.92
703	2021-12-27	42.13	23.41	65.54

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE	
704	CARPENTERS	2021-12-27	39.71	26.12	65.83
705	CARPET LAYERS (LINOLEUM)	2021-12-27	40.27	22.91	63.18
706	CEMENT MASONS	2021-12-27	41.51	22.72	64.23
707	ELECTRICIANS	2021-12-27	47.94	31.76	79.70
		2022-05-01	50.49	31.76	82.25
708	ELEVATOR CONSTRUCTORS	2021-12-27	53.28	41.79	95.07
		2022-01-01	55.10	43.00	98.10
709	GLAZIERS	2021-12-27	43.66	22.47	66.13
710	LATHERS	2021-12-27	41.10	23.70	64.80
712	IRONWORKERS	2021-12-27	39.35	31.80	71.15
714	MILLWRIGHT	2021-12-27	34.13	30.28	64.41
715	PAINTERS (INCLUDING HAND BRUSHED, HAND SPRAYED, AND THE TAPING OF PAVEMENT MARKINGS)	2021-12-27	39.23	24.86	64.09
716	PILEDRIIVER (INCLUDING VIBRATORY DRIVER OR EXTRACTOR FOR PILING AND SHEETING OPERATIONS)	2021-12-27	40.00	26.04	66.04
		2022-05-02	42.15	26.04	68.19
717	PIPEFITTERS . STEAMFITTERS	2021-12-27	47.99	32.45	80.44
718	PLASTERERS	2021-12-27	41.83	22.79	64.62
719	PLUMBERS	2021-12-27	51.24	27.46	78.70
		2022-05-01	53.74	27.46	81.20
720	ROOFER	2021-12-27	40.20	19.99	60.19
		2022-05-01	42.20	19.99	62.19

<b>LABOR CODE AND CLASS</b>	<b>EFFECT DATE</b>	<b>BASIC RATE</b>	<b>FRINGE RATE</b>	<b>TOTAL RATE</b>
721 SHEET METAL WORKERS	2021-12-27	47.36	31.42	78.78
	2022-05-01	49.86	31.42	81.28
722 SPRINKLER FITTERS	2021-12-27	49.78	30.38	80.16
	2022-06-01	52.38	30.38	82.76
723 TERRAZZO WORKERS	2021-12-27	41.96	22.50	64.46
724 TILE SETTERS	2021-12-27	38.10	26.81	64.91
725 TILE FINISHERS	2021-12-27	31.36	21.51	52.87
726 DRYWALL TAPER	2021-12-27	36.93	26.06	62.99
727 WIRING SYSTEM TECHNICIAN	2021-12-27	42.46	19.41	61.87
	2022-07-01	43.52	19.41	62.93
728 WIRING SYSTEMS INSTALLER	2021-12-27	29.75	16.08	45.83
	2022-07-01	30.49	16.08	46.57
729 ASBESTOS ABATEMENT WORKER	2021-12-27	34.85	21.64	56.49
	2022-01-01	36.23	22.26	58.49
730 SIGN ERECTOR	2021-12-27	30.67	17.65	48.32
	2022-06-01	32.17	17.65	49.82

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**ATTACHMENT A**  
**PROJECT LABOR AGREEMENT**

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**PROJECT LABOR AGREEMENT**  
**FOR POST-OPENING CONSTRUCTION AT**  
**U.S. BANK STADIUM**

**ARTICLE I**

**PURPOSE**

This Project Labor Agreement ("Agreement") is entered into this 6<sup>th</sup> day of November 2015, by and between SMG, a general partnership existing under the laws of the Commonwealth of Pennsylvania ("Project Contractor") and the Minneapolis Building and Construction Trades Council (the "Council"), acting on its own behalf and on behalf of all the Building Trades Local Unions affiliated with the Council (collectively called the "Union" or "Unions"), with respect to all construction at the U.S. Bank Stadium ("Stadium") site after the Stadium is opened (the "Project"). References throughout this Agreement to the Stadium being "opened" or its "opening" mean the time following completion of the construction of the Stadium pursuant to the separate Project Labor Agreement in effect for building the Stadium.

The term "Contractor" shall include all construction contractors and subcontractors of whatever tier engaged in onsite construction work within the scope of this Agreement (as more fully described in Article II), including the Project Contractor if it performs construction work within the scope of this Agreement. Where specific reference to SMG alone is intended, the term "Project Contractor" is used.

The parties to this Project Labor Agreement acknowledge that construction work at the Stadium after it is opened is important to its efficient operation and management. The parties recognize the need for the timely completion of post-opening construction work without work stoppages, interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability.

The Contractors and the Unions agree that timely construction will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to Project completion. They will work together to furnish skilled, efficient craftworkers for all post-opening construction.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craftworkers on the Project, to encourage close cooperation between the Contractors and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of the Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances that may arise. Further, the Contractors of whatever tier agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or

interference with the work covered by this Agreement, all as more fully described in Article VIII.

## ARTICLE II

### SCOPE OF AGREEMENT

Section 1. This Agreement shall apply and is limited to the recognized and accepted historical definition of construction work under the direction of and performed by the Contractors, of whatever tier, which may include the Project Contractor, which have contracts awarded for such work on the Project.

The Project is defined as: all construction work performed at the Stadium after its opening, including construction-related site preparation work and dedicated off-site work, which is in the Project Contractor's annual Capital Funding Plan for capital repair and enhancement, as it may be amended from time to time (the "Plan"), which Plan the Minnesota Sports Facilities Authority (the "Owner") approves and funds.

It is agreed that the Project Contractor shall require all Contractors of whatever tier that have been awarded contracts for work covered by this Agreement to accept and be bound by the terms and conditions of this Agreement by executing the Letter of Assent (Attachment A) prior to commencing work. The Project Contractor shall require compliance with this Agreement by the Contractors but shall not be liable for any breach by another Contractor of this Agreement or any collective bargaining agreement with any of the Unions. It is further agreed that, where there is a conflict, the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed by Contractors bound by the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians for all instruments calibration work and loop checking, and the National Agreement of the International Union of Elevator Constructors, with the exception of Articles VIII (Work Stoppages and Lockouts), IX (Disputes and Grievances), and X (Jurisdictional Disputes) of this Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone Agreement and that by virtue of having become bound to this Agreement, neither the Project Contractor nor the Contractors will be obligated to sign any other local, area, or national agreement.

Section 2. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function that may occur at the Stadium or be associated with the development of the Stadium.

Section 3. This Agreement shall only be binding on the signatory parties hereto and their heirs, successors, and assigns, and shall not apply to their parents, affiliates or subsidiaries.

Section 4. The Owner and the Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement;

provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Agreement, should it be designated the successful bidder.

Section 5. Items specifically excluded from the scope of this Agreement include the following: Maintenance, physical plant operations, and general labor work performed pursuant to a collective bargaining agreement between the Council and Project Contractor that covers such maintenance work.

Section 6. The provisions of this Agreement shall not apply to the Owner, and nothing contained herein shall be construed to prohibit or restrict the Owner or its employees from performing work not covered by this Agreement on the Stadium site.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of construction work at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Project Contractor, Contractors or other employer.

Section 9. It is understood and agreed that all Project work must be performed by employees of employers bound by the terms of this Agreement.

### **ARTICLE III**

#### **UNION RECOGNITION**

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. The hiring of employees shall be governed by the procedures set forth in the applicable collective bargaining agreements that form Schedule A (each a "CBA"), except that employers not party to any agreements that form Schedule A will be entitled to retain their core employees, defined as no more than 15% of the employer's construction employee workforce assigned to work on the Project, when commencing work on the Project. It is further agreed that there shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in a union.

Section 3. All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable collective bargaining agreement in Schedule A.

## ARTICLE IV

### **UNION REPRESENTATION**

Section 1. Authorized representatives of the Union shall have access to the Stadium worksite for representational purposes, provided they do not interfere with the work of employees and further provided that such representatives fully comply with visitor and security and safety rules and regulations of the Stadium.

Section 2. Each signatory Union shall have the right to designate a working journeyworker as a steward, and shall notify the Project Contractor in writing of the identity of the designated steward prior to the assumption of his or her duties as steward. Such designated steward shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay of their respective crafts.

## ARTICLE V

### **WAGES AND BENEFITS**

Section 1. All employees covered by this Agreement shall be classified in accordance with work performed and paid the base hourly wage rates for those classifications as specified in the applicable CBAs in attached Schedule A.

Section 2. The Contractors agree to pay contributions to the established employee fringe benefit funds in the amounts designated in the applicable CBAs in Schedule A; provided, however, that the Contractors and the Unions agree that only such bona fide employee benefits as accrue to the direct benefit of the employee (such as pension and annuity, health and welfare, vacation, apprenticeship and training funds) shall be included in this requirement and paid by the Contractors on the Project. If any new bona fide, jointly trustee fringe benefit funds are established in any of the CBAs in Schedule A during the life of this Agreement, the Contractors agree to pay the contributions required by the applicable CBA to the new fund.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

## ARTICLE VI

### **HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS**

Section 1. The work week and work day shall be determined as set forth in the applicable Schedule A CBA.

Section 2. Overtime pay shall be established by reference to the applicable Schedule A CBA.

Section 3. It shall not be a violation of this Agreement if the Project Contractor considers it necessary to suspend all or portion of the job to protect the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked; provided, however, that where the employer requests employees to remain at the site and available for work, the employees will be compensated for the standby time at their base hourly rate of pay.

Section 4. Shift work will be performed in accordance with the currently existing Schedule A CBA.

Section 5. Recognized holidays on the Project shall be those in the Schedule A CBAs. There shall be no change in the established holiday schedules and the days upon which those holidays are celebrated, except by mutual agreement.

## **ARTICLE VII**

### **MANAGEMENT'S RIGHTS**

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their respective operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall direct their respective working forces at their prerogative, including, but not limited to hiring, promotion, transfer, and lay-off; and discharge for just cause. No rules, customs, or practices shall be permitted or observed that limit or restrict production, or limit or restrict the working efforts of employees. There shall be no limitations upon the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

Employees must comply with their Contactor-employer's requirements for mandatory screening or testing for drugs, alcohol or other substance abuse.

Employees must comply with all health and safety rules and regulations governing individuals working at the Stadium.

The Unions acknowledge that the Project Contractor has a legal obligation to use reasonable efforts to have employees working on the Project be proficient, productive, and courteous to patrons of the Stadium.

## **ARTICLE VIII**

### **WORK STOPPAGES AND LOCKOUTS**

Section 1. At the Stadium or other site where dedicated off-site work is occurring during the term of this Agreement there shall be no strikes, picketing, work stoppages, slow downs,

sympathy strikes, or any other disruptive activity or economic action of any kind or nature whatsoever directed at any Contractor by the Council, any Union or employee, and there shall be no lockout by any Contractor. Failure of the Council, any Union, or an employee to cross any picket line established at the Stadium, or other site where dedicated off-site work is occurring, is a violation of this Article.

Section 2. The Council and Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing, sympathy strike, slowdown, or other disruptive activity or economic action of any kind or nature at the Stadium, or other site where dedicated off-site work is occurring, and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities that violate this Article. Any employee who participates in or encourages any activities that interfere with the operation of the Project or Stadium shall be subject to immediate discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

Section 3. Neither the Council nor any of the Unions shall be liable for acts of employees for whom they have no responsibility. The Building Trades Council Business Manager will immediately instruct, order and use the best efforts of his or her office to cause the Union or Unions to cease any violations of this Article. By complying with this obligation the Building Trades Council shall not be liable for unauthorized acts of any of the Unions. The principal officer or officers of such Unions will immediately instruct, order and use the best efforts of his or her office to cause the employees that such Unions represent to cease any violations of this Article. A Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

## **ARTICLE IX**

### **DISPUTES AND GRIEVANCES**

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing construction economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work under this Agreement, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of the enforcement, interpretation, application, or violation of this Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her Union business representative or job steward, shall, within seven (7) calendar days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor, and the Project Contractor, stating the provision(s) alleged to have been violated. The business representative of the Union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within five (5) calendar days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing by the grieving party, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should any of the Unions or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within five (5) calendar days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager of the Council and the involved Contractor shall meet within nine (9) calendar days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) arbitrators in a sub-regional panel from which the arbitrator shall be selected by the parties alternatively striking names from the list. The first strike shall be determined by the toss of a coin. The decision of the arbitrator shall be final and binding on all parties. The fees and expenses of such arbitration shall be borne equally by the Contractor and the involved Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

## **ARTICLE X**

### **JURISDICTIONAL DISPUTES**

**Section 1.** The assignment of Project work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Settlement Plan") or any successor Plan.

**Section 2.** All jurisdictional disputes on the Project, between or among Building and Construction Trades Unions and Contractors, parties to this Agreement, shall be settled and adjusted according to the present Settlement Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

**Section 3.** All jurisdictional disputes shall be resolved without the occurrence of any activity that Article VIII of this Agreement prohibits, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

**Section 4.** Each Contractor will conduct a pre-job conference with the appropriate representative of the Council and Unions prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

## **ARTICLE XI**

### **SUBCONTRACTING**

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation that is or agrees to become party to this Agreement. Any contractor or subcontractor working at the Stadium site shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

## **ARTICLE XII**

### **HELMETS TO HARDHATS**

**Section 1.** The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls,

counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for the Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

### **ARTICLE XIII**

#### **SAVINGS AND SEPARABILITY**

It is not the intention of the Council, Project Contractor, Contractors, or the Unions to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Project Contractor, Council, and Unions agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of the applicable law and the intent of the parties.

### **ARTICLE XIV**

#### **EQUAL EMPLOYMENT OPPORTUNITY**

Section 1. The Contractors, Council, and Unions will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, national origin, marital status, sexual orientation, gender identity, familial status, veteran status, or any other classification protected by applicable law. They further agree to undertake measures designed to eliminate discriminatory barriers including measures to ensure equal opportunity in hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and apprenticeship programs.

Section 2. The Council and Unions acknowledge that the Project Contractor has legal obligations to take actions to achieve statutory and the Owner's aspirational objectives regarding workforce and business inclusion and will assist and will not interfere with the Project Contractor in its efforts to meet such obligations. This includes, without limitation, the Project Contractor's obligation to make best efforts to employ or cause to be employed women and members of minority communities at the Stadium and services to be provided there.

**ARTICLE XV**

**DURATION OF THE AGREEMENT**

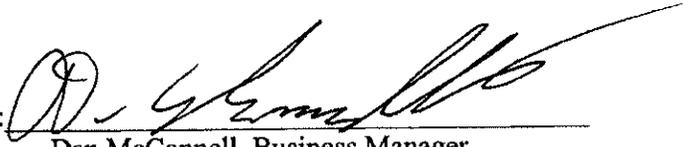
This Agreement shall be effective upon the opening of the Stadium after the completion of its construction pursuant to the separate Project Labor Agreement in effect for building the Stadium. This Agreement shall expire on August 1, 2021 or the date five years from the opening of the Stadium, whichever occurs later.

The applicable provisions of the CBAs included in Schedule A of this Agreement shall continue in full force and effect unless and until the Contractor and/or Union parties to said CBAs notify the Project Contractor in writing of any mutually agreed upon changes to those provisions and their effective date(s), which shall become the effective date(s) for purposes of applying said provisions under this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed and effective as of the day and year above written.

**FOR THE MINNEAPOLIS BUILDING AND  
CONSTRUCTION TRADES COUNCIL**

By: \_\_\_\_\_

  
Dan McConnell, Business Manager

Dated: \_\_\_\_\_

11/6/2015

**FOR SMG, PROJECT CONTRACTOR**

By: \_\_\_\_\_

  
[Insert Name and Title]

Patrick Talty, GM US Bank Stadium

Dated: \_\_\_\_\_

11/9/2015

**SCHEDULE A**

**LOCAL COLLECTIVE BARGAINING AGREEMENTS**

The applicable Local Collective Bargaining Agreements (“CBAs”) for the Building Trades Unions affiliated with the Council are incorporated herein by reference. For copies of the applicable CBAs, contact the Unions directly or the Minneapolis Building and Construction Trades Council at 612-379-4234, 312 Central Ave., #556, Minneapolis, MN 55414, dan@mplsbctc.org.

**ATTACHMENT A**

**LETTER OF ASSENT**

This certifies that the undersigned \_\_\_\_\_ [Name of Contractor]  
\_\_\_\_\_ has examined a true and correct copy of the Project Labor Agreement for Post-Opening Construction at U.S. Bank Stadium between SMG and the Minneapolis Building and Construction Trades Council and its affiliated Unions (the "PLA"), effective as described in Article XV of the PLA, and hereby agrees to accept, comply with, and be bound by all the terms and conditions of the PLA for all construction work it performs at the Stadium while the PLA is in effect as defined in Article XV of the PLA. It is understood that the signing of this Letter of Assent shall be binding on the undersigned Contractor as though it has signed the PLA. This Letter of Assent shall become effective and binding upon the undersigned Contractor and said Building and Construction Trades Council and affiliated Unions on the date the undersigned Contractor commences construction work at the Stadium and shall remain in effect until the sooner of the completion of the Contractor's construction work at the Stadium or expiration of the PLA as defined in Article XV of the PLA.

\_\_\_\_\_ [Contractor Name & Address] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

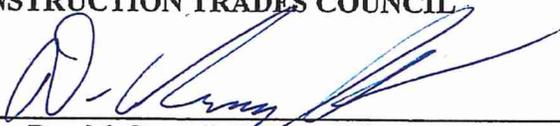
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**ADDENDUM TO PROJECT LABOR AGREEMENT**

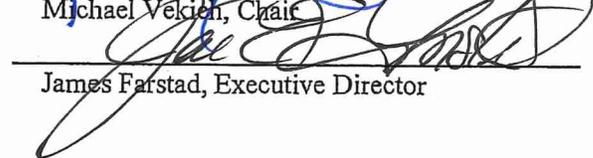
This Addendum, effective as of December 20, 2019, is entered into by the Minneapolis Building and Construction Trades Council and the Minnesota Sports Facilities Authority (the "MSFA") (together, "the Parties"). The Parties agree to be bound and abide by the current Project Labor Agreement for Post-Opening Construction at U.S. Bank Stadium ("PLA") for Project work (as defined in the PLA) awarded by the MSFA at U.S. Bank Stadium for the duration of the PLA. For purposes of work covered by this Addendum only, references in the PLA to SMG shall be changed to refer to the MSFA; and it is noted by the Parties that ASM Global is now the successor to SMG, so any reference in future Project documents to ASM Global has the same meaning as if the reference were to SMG. Contractors shall become bound by the PLA for purposes of work covered by this Addendum by signing the Letter of Assent, Attachment A to the PLA. This Addendum shall be attached to, and incorporated into, the PLA for all work covered by this Addendum.

**MINNEAPOLIS BUILDING &  
CONSTRUCTION TRADES COUNCIL**

By:   
Dan McConnell, Business Manager

**MINNESOTA SPORTS FACILITIES AUTHORITY**

By:   
Michael Vekich, Chair

By:   
James Farstad, Executive Director

Acknowledged and Agreed:

**ASM GLOBAL**

By:   
Its: Interim General Manager

**AMENDMENT TO PROJECT LABOR AGREEMENT  
FOR POST-OPENING CONSTRUCTION AT  
U.S. BANK STADIUM**

This Amendment to the Project Labor Agreement for Post-Opening Construction at U.S. Bank Stadium (the “Amendment”) is made by and between the Minneapolis Building and Construction Trades Council (the “Council”), the Minnesota Sports Facilities Authority (the “MSFA”) and ASM Global, collectively referred to as the “Parties.” This Amendment is effective August 1, 2021.

**RECITALS:**

1. The Council and SMG (ASM Global’s predecessor) entered into the Project Labor Agreement for Post-Opening Construction at U.S. Bank Stadium, effective November 6, 2015 (“the Project Labor Agreement”);
2. The Council and the MSFA entered into an Addendum to the Project Labor Agreement, effective December 20, 2019 (the “Addendum”), and the Addendum was also acknowledged and agreed to by ASM Global; and
3. The Parties desire to extend the Project Labor Agreement (including the Addendum) for three years by entering into this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated into this Amendment and made a part hereof.
2. **Defined Terms.** All capitalized terms used but not otherwise defined in this Amendment shall have the meanings attributed to such terms in the Project Labor Agreement.
3. **Amendment to Article XV.** The first paragraph of Article XV (Duration of the Agreement) of the Project Labor Agreement is deleted in its entirety and replaced with the following:

This Agreement shall be effective upon the opening of the Stadium after the completion of its construction pursuant to the separate Project Labor Agreement in effect for building the Stadium. This Agreement shall expire on August 1, 2024.

4. **Amendment to Article III.** Section 3 of Article III of the Project Labor Agreement is deleted in its entirety.

5. **No Other Changes.** Except as modified by this Amendment, there are no changes to the Project Labor Agreement. The Parties acknowledge and agree that the Project Labor Agreement as modified by the Addendum and this Amendment remains in full force and effect.
6. **Complete Agreement.** Any modification of, or addition to, this Amendment must be in writing and signed by all Parties. This Amendment and the Project Labor Agreement (including the Addendum) constitute the entire understanding between the Parties and supersede all prior discussions, representations, and/or agreements between the Parties with respect to the matters herein.
7. **Execution And Delivery.** This Amendment may be executed in counterparts, which taken together shall constitute one agreement binding on the Parties. Electronically transmitted signatures shall be valid and binding to the same extent as signatures delivered in original. In making proof of this Amendment, it will be necessary to produce only one copy signed (or reproduced from an electronically delivered signature) by the Party to be charged.

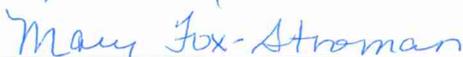
IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed and effective as of August 1, 2021.

**MINNEAPOLIS BUILDING &  
CONSTRUCTION TRADES COUNCIL**

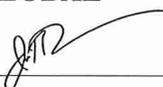
By:   
Dan McConnell, Business Manager

**MINNESOTA SPORTS FACILITIES AUTHORITY**

By:   
Michael Vekich, Chair

By:   
James Farstad, Executive Director  
Mary Fox-Stroman, Interim Executive Director

**ASM GLOBAL**

By:   
Its: John Drum, General Manager

## **Exhibit C**

### **CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (the "Agreement") is made and entered to as of the day of \_\_\_\_\_ 202\_, by and between the Minnesota Sports Facilities Authority ("Authority") and \_\_\_\_\_ ("Proposer") relating to the design, construction, financing of work at the Minnesota Multi-Purpose Stadium (the "Project"). For purposes of this Agreement, Minnesota Vikings Football, LLC are hereinafter referred to as the "Team". The Authority and Team and each of their respective subsidiaries and affiliates are hereafter referred to individually or collectively as "Project Participants".

1. For purposes of this Agreement, "Confidential Information" means "any and all" information accessed, received, obtained or otherwise learned about the Project Participants as a result of the Project, and/or any other information whether or not designated as Confidential Information by the Project Participants. Notwithstanding the above, Confidential Information will not include any information that

- (a) is or becomes public knowledge as a result of a disclosure made by Project Participants or
- (b) is or becomes available to without obligation of confidence from a source (other than the Project Participants) having the legal right to disclose that information.

2. Without the prior written consent of the Project Participants, which may be given or withheld in their sole and absolute discretion, the Proposer will (a) not disclose any Confidential Information to any third party nor give any third party access thereto, and (b) only disclose the Confidential Information to those of its employees or agents who need to know such information for purposes of completing the Project and who are bound by confidentiality obligations no less restrictive than this Agreement. For the avoidance of doubt, any disclosure by the Project Participants of work product received from the Proposer shall not be considered a breach of this Agreement.

3. The Proposer will use at least the same degree of care to avoid the publication, disclosure, reproduction or other dissemination of the Confidential Information as employed with respect to its own valuable, proprietary information which it protects from unauthorized publication, disclosure, reproduction or other dissemination and in no event shall the Proposer use less than reasonable care.

4. If the Proposer receives notice that it may be required or ordered to disclose any Confidential Information in connection with legal proceedings or pursuant to a subpoena, order or a requirement or an official request issued by a court of competent jurisdiction or by a judicial, administrative, legislative, regulatory or self-regulating authority or body, the Proposer shall (a) first give written notice of the intended disclosure to the Project Participants as far in advance of disclosure as is practicable and in any case within a reasonable time prior to the time when disclosure is to be made, (b) consult with the Project Participants on the advisability of taking steps to resist or narrow such request and (c) if disclosure is required or deemed advisable, cooperate with the Project Participants in any attempt made to obtain an order or other reliable assurance that confidential treatment will be accorded to designated portions of the Confidential Information or that the Confidential Information will otherwise be held in the strictest confidence to the fullest extent permitted under the laws, rules or regulations of any other applicable governing body.

5. The Proposer acknowledges that the unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury, the precise measure of which maybe difficult to ascertain. Accordingly, the Proposer agrees that the Project Participants will be entitled to specific performance and injunctive or other equitable relief, without bond, as a remedy for any such breach or threatened breach, in addition to all other rights and remedies to which the Project Participants may have. The Proposer will, except to the extent inconsistent with (a) its use in connection with legal proceedings or (b) applicable law, regulations, rules or official requests, at the Authority's election, destroy or return to the Project Participants any tangible copies of the Confidential Information and permanently delete all electronic copies of the Confidential Information in its possession or control, if any, at the earlier of the request of the Project Participants or the completion of the Project and will certify in writing to the Project Participants that it has completed the forgoing.

6. In the event of any litigation between the Project Participants and the Proposer in connection with this Confidentiality Agreement, the unsuccessful party to such litigation will pay to the successful party therein all

costs and expenses, including but not limited to actual attorneys' fees incurred therein by such successful party, which costs, expenses and attorneys' fees shall be included as a part of any judgment rendered in such action in addition to any other relief to which the successful party may be entitled.

7. All references to the Proposer herein also include any of its officers, directors, employees, attorneys, agents, professional advisors and independent contractors and any person, corporation, partnership or other entity which, directly or indirectly, controls, is controlled by, or is under common control with, the undersigned. This Agreement supersedes all previous agreements, written or oral, relating to the above subject matter, and may be modified only by a written instrument duly executed by the parties hereto. All clauses and covenants contained in this Agreement are severable and, in the event, any of them is held to be invalid by any court, this Agreement will be interpreted as if such invalid clauses and covenants were not contained herein. The Proposer represents and warrants that it has the right and authority to enter into and perform this Agreement. This Agreement may not be assigned without the Project Participants' prior written consent (in their sole discretion). This Agreement shall be construed in accordance with the internal laws of the State of Minnesota, USA, without regard to its principles of conflicts of laws. None of the provisions of this Agreement can be waived or modified except expressly in writing by the parties hereto.

Dated and effective this \_\_\_\_\_ day of \_\_\_\_\_, 202\_

\_\_\_\_\_  
("Authority")

\_\_\_\_\_  
("Proposer")

WITNESS:

\_\_\_\_\_

(If Proposer is a Corporation, complete below)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT D**

**NON-COLLUSION AFFIDAVIT**

[PROJECT NAME]

[PROJECT NUMBER]

I, \_\_\_\_\_ (Name), being first duly sworn, state that I am the  
\_\_\_\_\_ (office held) of \_\_\_\_\_ (name of Bidder).

I executed this bid having full authority to do so. I certify that Bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above-named project. No person or persons, natural or corporate, has, have, or will receive, directly or indirectly, any rebate, fee, gift, commission, or other thing of value in consideration for this offer.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT E**



**State of Minnesota/Metropolitan Agencies – MDHR Certificate of Compliance**

The Request for Proposals or Request for Bids solicitation you responded to may require you to have or to obtain a Certificate of Compliance from the Minnesota Department of Human Rights (MDHR). Please fill out and submit this form with supporting documentation. The bid-award agency will not review your proposal or bid until MDHR and the bid-award agency review this form and/or supporting documentation.

**Option A** – We have employed more than 40 full-time employees on any single day in any state during the previous 12 months. Please check the applicable box below.

We have a MDHR Certificate of Compliance. Attached is the Certificate.

We don't have a MDHR Certificate of Compliance. Attached is our application for a MDHR Certificate of Compliance.

**Option B** – We have an affirmative action plan approved by the Federal Government but no MDHR Certificate of Compliance. Please check the box below.

Attached is a copy of the affirmative action plan approved by the Federal government in the last 12 months, the Federal government's approval letter, and our application for a MDHR Certificate of Compliance.

**Option C** – We are exempt because we employed fewer than 40 full-time employees on any single day in any state during the previous 12 months. Please check the box below.

We are exempt. Attached is a list of all of our employees and their state of employment during the past 12 months.

**Option D** – The current bid is exempt. The bid award agency doesn't expect the goods or services provided will exceed \$100,000.

The bid proposal is exempt. The bid project number is: \_\_\_\_\_.

**Signature**

In signing this document, you certify that the information is accurate and that you are authorized to sign on behalf of the company.

Name of Company	Authorized Signature
Date	Printed Name
Phone Number	Title

AN EQUAL OPPORTUNITY EMPLOYER  
Freeman Building • 625 Robert Street North • Saint Paul, MN 55155 • Tel 651.539.1095  
MN Relay 711 or 1.800.627.3529 • Toll Free 1.800.657.3704 • Fax 651.296.9042 • mn.gov/MDHR

**EXHIBIT F**

U.S. BANK STADIUM

ACKNOWLEDGEMENT AND ATTESTATION FORM

(To Be Submitted with Proposal)

In submitting a Proposal, the undersigned has certified that the Proposer has reviewed the Request for \_\_\_\_\_ Proposal ("RFP") dated \_\_\_\_\_ and is familiar with the terms and conditions therein and accepts and waives any protest of the terms and conditions imposed under the RFP and all documents identified therein.

The Proposer understands the Authority and Team reserve the right to reject any or all proposals in accordance with its best interest. The Proposer submitting a response does so at its own expense. I hereby certify that the foregoing is true and correct.

Proposer's Name: \_\_\_\_\_ (Company)

Name: \_\_\_\_\_ (Officer of Company)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Note: Use full corporate name and attach corporate seal, if any, here.

{SEAL}

## EXHIBIT G

November 16, 2022

RFP for Construction Manager at Risk Services

<b>Attachment G: Construction Manager At-Risk, Fee and General Conditions Worksheet/Questionnaire</b>
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### Construction Manager at Risk Fee

Comments

Step 1: Pre-Construction Services during Schematic Design and Design Development including establishing a GMP for <b>Secured Perimeter</b> . CMAR Fee as a fixed amount. (8-week duration)	\$	
Step 1: Pre-Construction Services during Schematic Design and Design Development including establishing a GMP for <b>Multipurpose Room Addition</b> . CMAR Fee as fixed amount. (8-week duration)	\$	
Step 1: Pre-Construction Services during Schematic Design and Design Development including establishing a GMP for <b>FMP Club, Little Six Club, and Truss Bar Renovations</b> . CMAR Fee as fixed amount. (8-week duration)	\$	
Step 2: Construction Phase Services during Construction Documents and Construction for <b>Secured Perimeter</b> . CMAR Fee, as a Percentage of Cost of the Work (percentage will be converted to fixed fee at time of GMP)	%	
Step 2: Construction Phase Services during Construction Documents and Construction for <b>Multipurpose Room Addition</b> . CMAR Fee, as a Percentage of Cost of the Work (percentage will be converted to fixed fee at time of GMP)	%	
Step 2: Construction Phase Services during Construction Documents and Construction for <b>FMP Club, Little Six Club, and Truss Bar Renovations</b> . CMAR Fee, as a Percentage of Cost of the Work (percentage will be converted to fixed fee at time of GMP)	%	
Self Perform Work Fee, Percentage of Cost of the Work (percentage will be converted to fixed fee at time of GMP)	%	

On a separate attachment, define what is included in CMAR and SPW fees, as opposed to an assumed Cost of Work

## CMAR Management Staff General Conditions

On a separate attachment provide unit prices for all Management Staff and associated general condition items beginning at the time of the GMP through project completion. Include home office staff and on-site management, including but not limited to, benefits, bonuses, vacation time, personal time off, cell phone, mileage, per diem, relocation. Include unit prices for office trailer(s) and furnishings including copiers, furniture, technology, computers, phones, radios, office supplies, and other similar site-office related cost (excluding general requirements costs described below).

Do not include project general requirements such as utilities, dumpsters, temporary toilets, safety equipment, hoisting, snow removal, periodic and final clean, etc. as they are intended to be reimbursed as a cost of work item.

## Insurance / Others

		Comments
Full insurance package expressed in dollars per \$1,000 of construction costs (Include type and limits of coverage and deductibles), excluding Builder's Risk Insurance.	\$	
Builder's Risk Coverage expressed in dollars per \$1,000 of construction costs (Include type and limits of coverage and deductibles).	\$	
State whether CMAR intends to enroll subcontractors in subcontractor default insurance program and if so the cost of that program (stated as a percentage of the values of the subcontract enrolled).	%	
Performance Bond, As a Percentage of Cost of the Work	%	
Small Tools, As a Percentage of Field Labor	%	

## On a separate attachment, please comment on the following:

1.	Confirmation that your firm will only seek increases in the general conditions and general requirements cost NTEs in connection with change order time extension and/or material increase in scope of the work which requires additional general conditions and general requirements costs as established by CMAR.
2.	Willingness to forgo CMAR fee on change orders within 5% of GMP.
3.	Labor burden rate for general conditions field labor (straight time and overtime).
4.	Equipment rental rate schedules for 2023 and 2024 (owned & 3rd party rentals). Willingness to cap rental costs at no more than purchase price. Willingness to discount from AED rates?
5.	Confirmation that your firm will have an open bid/open book policy with the Authority on all aspects of the project including providing subcontractor buy-out costs vs. line item estimates carried in the GMP.

6.	Acknowledgement that your firm is willing to return buyout savings, reduce construction contingency incrementally during construction rather than at end of project.
7.	Recommended CMAR Contingency by Design Phase (% of construction cost).
8.	Recommended inflation factor to be included within GMP.
9.	Provide 2023 and 2024 billing rates. For all positions that will be charging time to the project (Full cost rates, 40 hr/week, benefits, bonuses, cell phone, mileage, per diem, vacation, PTO, etc.)